

State and county	Location	Dates and Name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois, Cook.....	Village of Orland Park.....	June 24, 1992, July 1, 1992, <i>Orland Park Star</i> .	The Honorable Frederick T. Owens, Mayor of the Village of Orland Park, Cook County, 14700 South Ravinia Avenue, Orland Park, Illinois 60462.	June 17, 1992.....	170140 D
Illinois, Cook and Will.....	Village of Tinley Park.....	June 24, 1992, July 1, 1992, <i>Tinley Park Star</i> .	The Honorable Edward J. Zbrocki, Mayor of the Village of Tinley Park, Cook and Will Counties, 16250 Oak Park Avenue, Tinley Park, Illinois 60477.	June 17, 1992.....	170169 E
Nevada, Washoe.....	Unincorporated areas.....	June 19, 1992, June 26, 1992, <i>Reno Gazette-Journal</i> .	The Honorable Gene McDowell, Chairman, Washoe County, Board of Commissioners, P.O. Box 11130, Reno, Nevada 89520.	June 10, 1992.....	320019
Tennessee, Shelby.....	City of Germantown.....	June 18, 1992, June 25, 1992, <i>Germantown News</i> .	The Honorable Charles Salvaggio, Mayor of the City of Germantown, 1930 Germantown Road, P.O. Box 38809, Germantown, Tennessee 38183-0809.	June 5, 1992.....	470353 C

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: July 15, 1992.

C.M. "Bud" Schauerte,  
Administrator, Federal Insurance  
Administration.

[FR Doc. 92-17396 Filed 7-23-92; 8:45 am]

BILLING CODE 6718-03-M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 87-02; Notice 6; 90-26; Notice 3]

RIN 2127-AD43; 2127-AD44

### Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages

**AGENCY:** National Highway Traffic  
Safety Administration (NHTSA), DOT.

**ACTION:** Final rule; delay of effective  
date and response to petitions for  
reconsideration.

**SUMMARY:** In response to petitions for reconsideration, this final rule amends Standard No. 210 to clarify the location for measuring compliance with the anchorage location requirements, and to allow for other means of attaching the anchorage to the vehicle structure. In addition, this final rule extends the effective date for a number of recent amendments to Standard No. 210 one year. These amendments imposed significant new requirements which are still not clear to the vehicle and

equipment manufacturers. This delay will allow sufficient time for the manufacturers to make any necessary changes in their vehicle designs to accommodate these new requirements.

**DATES:** The amendments made in this rule are effective September 1, 1993.

Any petitions for reconsideration must be received by NHTSA no later than August 24, 1992.

**ADDRESSES:** Any petitions for reconsideration should refer to the docket and notice numbers of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.-4 p.m., Monday through Friday.)

**FOR FURTHER INFORMATION CONTACT:** Mr. Clarke B. Harper, Frontal Crash Protection Division, NRM-12, room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4916.

#### SUPPLEMENTARY INFORMATION:

##### Background

On April 30, 1990, the agency published a final rule amending several requirements of Federal motor vehicle safety standard No. 210, *Seat belt assembly anchorages*, (55 FR 17970). On December 4, 1991, the agency further amended Standard No. 210 in response to seven petitions for reconsideration of the April 1990 final rule (56 FR 63676). On the same day, the agency also published a final rule clarifying the definition of "anchorage" in Standard No. 210 (56 FR 63682).

As a result of these three final rules, the following amendments were made to Standard No. 210:

1. The definition of "seat belt anchorage" was amended to explicitly state that any vehicle part or component that transfers the load from a safety belt to the vehicle structure is part of the anchorage (effective 9/1/92).

2. The amendment to the definition of "seat belt anchorage" had the effect of requiring the attachment hardware to withstand the 3,000 pound forces during the strength test. While attachment hardware for manual safety belts is still affected, the attachment hardware for dynamically-tested and automatic safety belts was excluded (effective 9/1/92).

3. The minimum lap belt angle for front seats was increased from 20° to 30° (effective 9/1/92).

4. The minimum lap belt angle for rear seats was increased from 20° to 30° (effective 9/1/93).

5. Simultaneous testing of all anchorages common to a single occupant seat and of anchorages not common to the same occupant seat but within 12 inches of each other was required (effective 9/1/92).

6. The use of a narrower body block during strength testing was allowed as an option (effective 9/1/92).

7. Use of wire cable or strong webbing to restrain the body block during strength tests was allowed (effective 9/1/92).

8. The term "hip point" was substituted for the term "seating reference point" in the definition of "outboard designated seating position"



and for the location of the upper anchorage zone (effective 9/1/92).

9. All redundant anchorage requirements were removed (already in effect, as of 4/30/90).

The agency received four petitions for reconsideration of the two December 5, 1991 final rules. This notice responds to those petitions.

## Issues

### 1. Definition

The December 5, 1991 final rule amending the definition of "seat belt anchorage" in Standard No. 210 was intended to make it clear that any vehicle part or component that transfers the load from a safety belt to the vehicle structure is part of the anchorage. The amended definition is:

"Seat belt anchorage" means any component, other than the webbing or straps, involved in transferring seat belt loads to the vehicle structure, including, but not limited to, the attachment hardware, seat frames, seat pedestals, the vehicle structure itself, and any part of the vehicle whose failure causes separation of the belt from the vehicle structure.

In the preamble to the final rule, the agency stated that "(t)he new definition gives examples of some of the components whose failure would result in non-compliance with Standard No. 210, without limiting the scope of the definition to those enumerated components."

Both Ford and Toyota petitioned that the definition of "seat belt anchorage" be amended by adding various components to either the list of inclusions or the list of exclusions in the definition. The agency already considered the option of listing many specific components and decided not to take that course of action. The agency believed that being too specific would undesirably restrict the definition. The agency continues to be hesitant to list specific components in the definition of anchorage, or conversely, to list components that are excluded from this definition, as the definition would then deal inadequately with designs not contemplated by the agency at the time of drafting the list. For this reason, the agency is not amending the definition of "seat belt anchorage" as requested.

In its petition, Ford has asked the whether the D-ring is part of the anchorage "(i)n seat belt assemblies where the D-ring is attached to the structure by a webbing strap." The webbing discussed in the final rule as being excluded from the definition of "seat belt anchorage" was the webbing that encompasses the occupant, not webbing used as attachment hardware.

NHTSA believes that the attachment hardware should include all the equipment that attaches the safety belt to the vehicle structure. The safety belt system is tested in Standard No. 209, *Seat belt assemblies*. However, the D-ring and its attachment are not tested as part of the Standard No. 209 test. Therefore, the agency considers the D-ring to be part of the safety belt anchorage.

In another question regarding the definition, Toyota provided a sketch of a safety belt system which has a strap hooked directly to the anchorage bolt. For this design, the agency would consider it a failure of the Standard No. 210 test if the strap pulled away from the bolt. However, if the strap failed at the buckle, the agency would not consider the failure a non-compliance with the strength requirements of Standard No. 210.

### 2. Location Requirements

The only amendment to Standard No. 210 that was intended to affect the location requirements was the one increasing the minimum lap belt angle to 30 degrees.

Ford and Volkswagen stated that the upper anchorage location requirement in S4.3.2 was not clear. This section states that the upper anchorage must be within a specified zone. With the addition of attachment hardware to the definition of anchorage, Ford and Volkswagen stated that it is not clear what must remain within this zone.

NHTSA agrees with these petitioners. In amending Standard No. 210, the agency did not intend to change the stringency of the requirement for locating upper restraint anchorages. Before the addition of attachment hardware to the definition of anchorage, the determination of the upper anchorage's compliance with the location requirements was made with reference to the upper anchorage bolt hole. The agency believes that this reference is still appropriate for non-adjustable anchorages. Accordingly, NHTSA is amending S4.3.2 to state that the center of the anchorage bolt hole must be within the upper anchorage location zone.

Several additional location issues were raised by Ford and Volkswagen. First, Volkswagen requested that the location requirements not reference a bolt hole in case the vehicle manufacturer wishes to weld the safety belt attachment hardware to the vehicle, instead of using a bolt. NHTSA agrees with Volkswagen that reference to a bolt hole could be design restrictive. Therefore, the agency is amending S4.3.2 to require that either "the vertical

centerline of the bolt holes, or, for designs using other means of attachment to the vehicle structure, at the centroid of such means" must be in the zone. This amendment will accommodate welding or other attachment techniques.

In accommodating welded anchorages, the agency wants to note that it and most of the automotive industry encourage replacement of the safety belt system after a moderate crash. Welding the safety belt attachment hardware may increase the difficulty of replacing safety belt systems. Therefore, despite its adoption of the amendment to permit other means of attaching the safety belt to the vehicle, the agency encourages manufacturers to design belt systems so as to facilitate replacement of those systems.

Second, Ford raised concerns about the location requirements for adjustable upper anchorages (AUA). The agency recognizes adjustable anchorages may be attached to the vehicle in multiple locations, a possibility which is not accommodated by the language of S4.3.2. To date, the agency has interpreted the location provisions as requiring that the bolts holding the adjustable anchorage must be in the upper anchorage zone. However, as stated earlier, the agency did not intend all of the attachment hardware for an AUA to remain in the zone. Accordingly, the agency is amending this final rule, as suggested by Ford in its petition for reconsideration, to require that the midpoint of the range of all adjustment positions remain within the required zone. This amendment will only affect rear outboard anchorages in vehicles equipped with automatic restraints and the front and rear outboard anchorages in the small number of vehicles with gross vehicle weight rating between 8,500 and 10,000 pounds. It will not affect the front outboard anchorages on all vehicles equipped with automatic restraints since those anchorages are excluded from the anchorage location requirements.

### 3. Dynamically Tested Safety Belts

The April 30, 1990 final rule extended the applicability of Standard No. 210 to the attachment hardware of a safety belt system. Responding to the petitions for reconsideration, the December 5, 1991 final rule excluded the attachment hardware for seat belt assemblies that meet the frontal crash protection requirements of S5.1 of Standard No. 208. The preamble noted that the agency does not consider a manual belt installed at a seating position that is also equipped with an air bag to be a



dynamically tested belt. It stated that the attachment hardware for these belts is therefore still subject to the Standard No. 210 strength tests.

Volkswagen petitioned the agency to reconsider its position that manual belts installed at a seating position equipped with an air bag are not dynamically tested. In the alternative, Volkswagen asked that manufacturers be given the option of dynamically testing these manual belt systems in lieu of Standard No. 209 and Standard No. 210 testing.

The agency believes that this issue has already received adequate review, and that the automotive industry has had sufficient opportunity to voice objection in previous rulemaking actions regarding this issue. No other petitions have been received on this issue. Further, no other petitioners asked to eliminate the existing static strength and attachment hardware tests. In addition, Volkswagen has provided no new data or information that would support its petition. Therefore, the agency has decided that this aspect of Volkswagen's petition for reconsideration should be denied.

Concerning Volkswagen's request that manufacturers be allowed to dynamically test safety belts in vehicles with airbags in lieu of required compliance with Standards No. 209 and 210, this is already an option. Manufacturers may select any reasonable basis for determining compliance with safety standard requirements. Therefore, if the manufacturer believes that a dynamic test would provide a sufficient basis for certifying compliance with aspects of Standards No. 209 and 210, a manufacturer may choose to determine compliance using a series of dynamic tests. However, the agency would determine compliance by means of the static tests specified by Standard No. 210.

#### 4. Leadtime

The Ford petition stated that if the attachment hardware had to be located entirely within the anchorage zones, the location of some anchorages would have to be changed. This would require more time than the time remaining between now and September 1, 1992. As explained previously, it was not the intent of the agency to include all attachment hardware within the location requirements.

The agency has reviewed the changes in Standard No. 210 since the April 1990 final rule and the December 1991 final rules (effective September 1992 and September 1993). The agency imposed significant requirements in these amendments, such as the inclusion of

attachment hardware in the strength test and the addition of testing more than one set of anchorages at the same time.

It is apparent that many significant issues are still not clear to the vehicle and equipment manufacturers. Not only has the agency received these four petitions for reconsideration within nine months of the effective date, but it also continues to receive informal inquiries concerning the definitions and the test requirements of these changes. Based on this experience, NHTSA believes it desirable to extend the effective date of these amendments until September 1, 1993. This delay applies to the following final rules: 55 FR 17970, April 30, 1990 (except for the amendment to S4.1.3 which was effective April 30, 1990); 55 FR 24240, June 15, 1990; 56 FR 63676, December 5, 1991; and, 56 FR 63682, December 5, 1991.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

#### Rulemaking Analysis and Notices

##### *Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures*

NHTSA has examined the impact of this final rule and determined that it is not major within the meaning of E.O. 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other impacts of this rulemaking action are so minimal that a full regulatory evaluation is not required. The agency estimates the cost savings that would result from delaying the effective date to September 1, 1993 would be between \$403,000 and \$1,824,000. The actual value depends on which type of design would have been incorporated in school buses due to the requirements for simultaneous testing.

This cost savings estimate reflects the range of annual costs originally estimated for simultaneous testing (\$255,000-\$1,676,000), plus a small (\$148,000) savings estimated for those few vehicles that do not meet the 30 degree minimum lap belt angle requirement in the front seat. In most of the vehicles that would not meet the 30 degree requirement, the problem was in the rear seat. Since the effective date for the rear seat lap belt angle change is already September 1, 1993, and is not being extended further, there are no savings for these vehicles. These costs were discussed in greater detail in the April 30 final rule.

#### *Regulatory Flexibility Act*

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. As stated above, the agency does not expect any significant cost impact associated with this final rule.

#### *National Environmental Policy Act*

NHTSA has also analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

#### *Executive Order 12612 (Federalism)*

Finally, NHTSA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### **List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles.

#### **PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS**

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

#### **§ 571.210 [Amended]**

2. S4.3.1.4 of Standard No. 210 is revised to read as follows:

S4.3.1.4 Anchorages for an individual seat belt assembly shall be located at least 6.50 inches apart laterally, measured between the vertical



centerline of the bolt holes or, for designs using another means of attachment to the vehicle structure, between the centroid of such means.

3. S4.3.2 of Standard No. 210 is revised to read as follows:

**S4.3.2 Seat belt anchorages for the upper torso portion of Type 2 seat belt assemblies.** Adjust the seat to its full rearward and downward position and adjust the seat back to its most upright position. With the seat and seat back so positioned, as specified by subsection (a) or (b) of this section, the upper end of the upper torso restraint shall be located within the acceptable range shown in Figure 1, with reference to a two-dimensional drafting template described in SAE Recommended Practice J826 (May 1987). The template's "H" point shall be at the design "H" point of the seat for its full rearward and full downward position, as defined in SAE Recommended Practice J1100 (June 1984), and the template's torso line shall be at the same angle from the vertical as the seat back.

(a) For fixed anchorages, compliance with this section shall be determined at the vertical centerline of the bolt holes or, for designs using another means of attachment to the vehicle structure, at the centroid of such means.

(b) For adjustable anchorages, compliance with this section shall be determined at the midpoint of the range of all adjustment positions.

Issued on July 20, 1992.

Frederick H. Grubbe,  
Deputy Administrator.

[FR Doc. 92-17437 Filed 7-23-92; 8:45 am]

BILLING CODE 4910-59-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1057

[Ex Parte No. MC-203]

### Petition To Amend Lease and Interchange of Vehicle Regulations

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission has amended its written lease requirements by adding additional language to the Lease and Interchange of Vehicles regulations. The purpose of the amendment is to give notice to the courts and workers' compensation or other administrative tribunals who have ruled otherwise that, in requiring that a lease provide for the lessee's "exclusive possession, control, and use" of the

equipment provided by the lessor, it is not the intention of the Commission's regulations to define or affect the relationship between a motor carrier lessee and an independent owner-operator lessor. A notice of proposed rulemaking was published in the Federal Register on January 22, 1992 at 57 FR 2512.

**EFFECTIVE DATE:** August 23, 1992.

**FOR FURTHER INFORMATION CONTACT:** Jessie Hodge, (202) 927-5302, or Richard Felder, (202) 927-5610. (TDD for hearing impaired: (202) 927-5721).

**SUPPLEMENTARY INFORMATION:** The Commission has amended the regulations dealing with written lease requirements at 49 CFR 1057.12(c). Exclusive possession and responsibilities, by inserting a new paragraph (4) confirming the Commission's view that the type of control required by the regulation does not affect "employment" status and that it is not the intention of the regulations to affect the relationship between a motor carrier lessee and the independent owner-operator lessor. Inclusion of a specific statement in the regulations was found to be necessary because certain State courts and administrative tribunals have determined that the regulations affect the relationship between the lessee and lessor.

Additional information is continued in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. This action will not have a significant economic impact upon a substantial number of small entities.

### List of Subjects in 49 CFR Part 1057

Motor carriers, Reporting and recordkeeping requirements.

Decided: June 29, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,  
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1057 of the Code of Federal Regulations is amended as follows:

## PART 1057—LEASE AND INTERCHANGE OF VEHICLES

1. The authority citation for part 1057 continues to read as follows:

Authority: 49 U.S.C. 11107 and 10321; 5 U.S.C. 553.

2. In § 1057.12 a new paragraph (c)(4) is added to read as follows:

### § 1057.12 Written lease requirements.

(c) \* \* \*

(4) Nothing in the provisions required by paragraph (c)(1) of this section is intended to affect whether the lessor or driver provided by the lessor is an independent contractor or an employee of the authorized carrier lessee. An independent contractor relationship may exist when a carrier lessee complies with 49 U.S.C. 11107 and attendant administrative requirements.

[FR Doc. 92-17519 Filed 7-23-92; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 285

[Docket No. 920407-2519]

RIN 0648-AD01

### Atlantic Tuna Fisheries; Bluefin Tuna

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Secretary of Commerce (Secretary) issues this final rule governing the Atlantic bluefin tuna (bluefin) fishery under authority of the Atlantic Tunas Convention Act (ATCA) to: (1) Reduce the total U.S. quota allocation by 10 percent for the 2-year period 1992 through 1993; (2) spread the reduction equally over the years 1992 and 1993, except for subcategories of fisheries that already have begun fishing in 1992; (3) apply the annual harvest amount among the categories, based on the average landings of each category during the period 1983 through 1991, adjusted for past catches (smaller than giants) sold by General category permit holders but attributed to the Angling category, and on improving scientific monitoring; (4) reduce the allowable catch of bluefin less than 115 cm (45 inches) to no more than 8 percent of the annual U.S. allocation; (5) prohibit sale of bluefin less than 178 cm (70 inches);



(6) implement area subquotas and differential bag limits in the Angling category for bluefin less than 115 cm (45 inches); (7) prohibit retention of young school bluefin (less than 66 cm (26 inches)); (8) implement a mechanism to subtract quota overages from, or add underages to, the appropriate category or subcategory if appropriate in following years; and (9) make other technical changes to enhance administration, management, and enforcement.

This action is necessary to implement the recently adopted recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) and to improve management of the bluefin tuna resource.

**EFFECTIVE DATE:** July 20, 1992.

**ADDRESSES:** Copies of the Environmental Assessment (EA) and the Final Regulatory Impact Review (FRIR) are available from Richard H. Schaefer, Director, Office of Fisheries Conservation and Management (F/CM), National Marine Fisheries Service (NMFS), 1335 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Stone, 301-713-2347.

**SUPPLEMENTARY INFORMATION:**

#### Expanded Summary

The final rule bases the allocations among categories on a 10-percent reduction from the 1983-1991 average landings in the respective categories, with two adjustments, in order to minimize the economic impact on businesses dependent upon the bluefin tuna fishery. The final rule provides an opportunity for commercial fishing (the sale of fish) to exceed slightly a 10 percent reduction in the amount of fish sold historically. The average catch of bluefin sold by permitted fishermen between 1983 and 1991 was 1,128 metric tons (mt), a 10 percent reduction would provide 1,015 mt. Under the proposed rule, the potential catch available for sale would have been 979 mt (including the 85 mt reserve). Under the final rule, by allocating 54 mt of the reserve to the General category and releasing the 31 mt reserve, the potential catch for sale by permitted fishermen is 1,029 mt. This is shown in the following table:

Average catch sold <sup>1</sup> (1983-1991)	Catch available for sale <sup>2</sup>	
	Proposed rule	Final rule
1128	* 894-979	* 998-1029

(1) Average catch (mt) of bluefin sold by permitted fishermen.

(2) Catch available for sale by permitted fishermen.

(3) Potential catch available for sale (without reserve—with reserve for sale).

(4) Potential catch available for sale (with 54 mt of reserve in the General category—with remaining 31 mt reserve for sale).

The opportunity to catch small fish, i.e., less than 115 cm, is reduced by 75 percent by this final rule. The Angling category is affected more than the other categories by this rule and by the ICCAT recommendation that limits the allowable catch of bluefin less than 115 cm (45 inches) to no more than 8 percent of the total annual U.S. allocation. The Angling category is the only category that traditionally harvests and retains fish that small. The Angling category is also affected by the measure that prohibits sale of any fish less than 178 cm (70 inches), which will prevent unpermitted fishermen from selling bluefin tuna.

#### Background

On April 28, 1992, NMFS published a proposed rule at 57 FR 17872 to amend the regulations governing the Atlantic bluefin tuna fishery. Public comment on the proposed rule was invited through May 26, 1992. Comments received at a Congressional hearing on May 27, 1992, were also accepted.

The Atlantic bluefin tuna fishery is managed under the implementing regulations at 50 CFR part 285 under the authority of the Atlantic Tunas Convention Act, 16 U.S.C. 971 *et seq.* The ATCA authorizes the Secretary to promulgate regulations as may be necessary to carry out the recommendations of ICCAT. The authority to implement the ICCAT recommendations is delegated from the Secretary to NMFS. The Fishery Conservation Amendments of 1990 (FCA), Public Law 101-627, also authorize management of tunas under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Secretary is issuing regulations governing this fishery under the authority of the ATCA until such time as a fishery management plan is developed.

#### Background

ICCAT adopted several recommendations for additional measures to enhance recovery of the bluefin stock beginning with the 1992 fishing year. These measures include:

(1) That the Contracting Parties institute effective measures to limit the quota for the 2-year period 1992-1993 to 4,788 mt, but not to exceed 2,660 mt in the first year;

(2) That the 2-year quota be taken by the Contracting Parties in the same

proportions as previously agreed to for 1990;

(3) That beginning with the 1992 catch, if a Contracting Party exceeds its annual or 2-year quota, then in the 2-year period or the year following reporting of that catch to ICCAT, the Contracting Party will compensate in total by reducing the quota of the domestic catch category responsible for the overage;

(4) That the three Contracting Parties will prohibit the taking and landing of bluefin weighing less than 30 kg, or in the alternative, having a fork length less than 115 cm, with discretion to grant tolerances of no more than 8 percent by weight of the total bluefin catch on a national basis; and

(5) that the Contracting Parties institute measures to preclude economic gain to fishermen from landing bluefin less than 30 kg, or in the alternative, 115 cm.

As a member of ICCAT, the United States is obligated to adopt domestic regulations to comply with these recommendations. During December 1991 and January 1992, NMFS held four scoping meetings to inform the public and initiate discussion of possible options to implement the ICCAT recommendations. A proposed rule was prepared, taking into account the comments received, and eight hearings and one informal meeting were held on this rule during April and May, 1992. All sectors of the fishery were represented at these meetings.

#### Management Measures

##### Spreading the Quota Reduction

In the proposed rule, NMFS selected a preferred option to reduce the total U.S. quota allocation by 10 percent for the 2-year period 1992 to 1993 to conform with the ICCAT recommendation and to spread the reduction equally over the years 1992 and 1993 (except for subcategories of fisheries that have already taken a substantial portion of their allocations in 1992). After review of comments received, NMFS has determined that this alternative, with some modifications, is the least disruptive to the participants in the U.S. fishery, in terms of shifts in jobs and economic impacts on coastal communities.

In § 285.22(h), NMFS had proposed an adjustment to quotas in 1993 if the total 1992 quota for U.S. fisheries is exceeded. In that event, overages in any category would have been deducted from the 1993 quota for that category. In the final rule, adjustments will be made in 1993 for any overage or underage in any category or subcategory, whether or not



the total U.S. quota is exceeded. The only proviso is that the total 1992 harvest plus the 1993 adjusted quotas and reserve cannot exceed the ICCAT recommended quota of 2,497 mt for the 1992-1993 period.

#### Allocation of Quota Reduction

The proposed rule based the allocations among categories on a 10-percent reduction from the 1983-1990 average landings in the respective categories. After the close of the comment period, NMFS reassessed this scheme and reconsidered the option favored by numerous commenters, which was to reduce the current quotas by 10 percent. NMFS has determined that its proposed scheme, with several modifications, is the most fair and equitable approach.

First, NMFS agrees with numerous commenters that the 1991 data should be included when calculating the average landings. Accordingly, NMFS has recalculated the quota based on the average landings from 1983 through 1991.

Second, NMFS recalculated the amount of bluefin smaller than giants landed and sold by vessels permitted in the General category, which had been previously counted against the Angling category because they were smaller than giants. NMFS has determined that it is more appropriate to count those fish against the General category quota, since they were harvested by vessels with General category permits. NMFS also intends to continue counting the landings in this manner.

Finally, the proposed rule contained a reserve amount of 85 mt, which may be allocated, in part or entirely, during the season to any category based on

specified considerations, and to provide a buffer to help prevent the U.S. quota from being exceeded. This final rule provides for a reserve amount of only 31 mt, because NMFS believes it can manage the 2-year quota and thus does not need the full 85 mt reserve. NMFS will retain the flexibility to use the rest of the reserve as conditions in the fisheries warrant.

NMFS has selected a combination of measures, in conjunction with the harvest-based allocation scheme, intended to minimize disruptions in the fishery and to provide the best combination of catch and effort data for ICCAT assessment purposes. These actions are consistent with two of the stated objectives of the bluefin management regime.

NMFS believes allocation of the reduced quota cannot ignore the current state of the fishery and the economic reliance that has built up since 1983 in the angling sector. It is true that this sector of the fishery and its support industries would not have developed so substantially had NMFS been able to keep the Angling category within its quota over the last decade. The fishermen in this category and support industries violated no law—their economic dependence on the fishery must be considered.

A straight 10-percent reduction from current quotas would provide only 103 mt to the Angling category, which is affected more than the other categories by the ICCAT recommendation that limits the allowable catch of bluefin less than 115 cm (45 inches) to no more than 8 percent of the total annual U.S. allocation. The Angling category is the only category that traditionally harvests and retains fish that small. This rule will

reduce the Angling category catch of small bluefin and could reduce the fishing mortality rate on these fish by over 50 percent from recent year averages. The Angling category is also affected by the measure that prohibits sale of any fish less than 178 cm (70 inches), the only fish that category may catch and retain. The combination of these measures would effectively prevent traditional Angling category fishermen from deriving income from the fishery, which could result in an economic loss to coastal communities. A quota of 219 mt, along with other brakes on fishing mortality, may allow the Angling category to stretch out its season through most of the summer, compensating anglers to some extent for the ICCAT mandated small-fish and no-sale measures and the more restrictive bag limits.

The purpose of the ICCAT quota is scientific monitoring. Since the large fish index is one of the most important indices used to tune the ICCAT bluefin tuna stock assessments, it is essential that these data be gathered over as long a season as possible. The General category catch and effort statistics (from rod and reel and handline gear) are the sole source of the large fish index. For this reason, 54 mt of the proposed reserve is added to the General category quota, where it will help keep the season open, thereby providing more catch, effort, and biological data over a longer period of time. Incidentally, the added tonnage will help mitigate the economic impacts of the reduced quota and no-sale provision.

The following table shows proposed quotas (in mt) and the steps (A 1, A 2, and A 3) taken to arrive at final quotas (A 3).

	Historical quota	Proposed quota	A 1	A 2	A 3
General.....	590	410	414	477	531
Harpoon.....	54	54	53	53	53
Purse seine.....	386	319	301	301	301
Angling.....	126	271	282	219	219
< 115 cm.....	81	100		100	100
> 115 cm.....	45	171		119	119
Incidental.....	137	111	113	113	113
Reserve.....	94	85	85	85	31

A 1 Proposed quota plus 1991 data.

A 2 Proposed quota plus 1991 data; adds to the General category the fish sold by General category permit holders and counted against the Angling category.

A 3 Final quotas. Modifies A 2 by adding part of the reserve to the General category to guard against early closure and assure as much data as possible for the important large fish index.

The following table gives a complete breakdown of the quotas, comparing the proposed and final rules:

Category	Proposed (mt)	Final (mt)	Category	Proposed (mt)	Final (mt)
General.....	410	531	Incidental:		
Area set-aside*.....	45	40	1992.....	137	137
Harpoon.....	54	53	South of 36°.....	104	104
Purse Seine.....	319	301	North of 36°.....	28	28
Angling.....	271	219	Other.....	5	5



Category	Proposed (mt)	Final (mt)
Years after 1992.....	83	89
South of 36°.....	61	67
North of 36°.....	17	18
Other.....	5	4
Reserve.....	85	31

\*Historically used, if necessary, for late season General category catches of giants in the New York Bight.

#### Bluefin Less Than 115 cm

As ICCAT recommended, the rule reduces the allowable catch of bluefin less than 115 cm (45 inches) to no more than 8 percent of the annual U.S. allocation, or about 100 mt, which will be used in the Angling category only. Vessels in the Purse Seine category fishing for other tunas are allowed 1 percent per trip (by weight) incidental catch of bluefin less than 178 cm. Any landings of these incidental catches may not be sold and will be counted against the Purse Seine category quota.

#### Limitations on Sale

NMFS had proposed a ban on the sale of bluefin smaller than 196 cm (140 kg). We received many comments on mortality of bluefin slightly less than 196 cm that would occur in directed fisheries for giants. NMFS chooses 178 cm (about 235 pounds (107 kg)) as the lower limit for the sale of bluefin. This will allow landing and sale of an unavoidable bycatch of fish that could be mistaken at sea for giants. A limit of 235 pounds (107 kg) should protect all of the immature 6-year-old, and some of the immature 7-year-old, bluefin. This ban on sale of "small medium" bluefin will help further reduce the fishing mortality rate on pre-spawners and also reduce the incidental mortality associated with the directed giant bluefin fisheries.

#### Areas and Bag Limits

The proposed implementation of area subquotas and differential bag limits in the Angling category for bluefin less than 115 cm (45 inches) was retained, but modified. All vessels fishing in the Angling category are limited to one small medium bluefin per day. Private boats are allowed two school bluefin per trip. The bag limit for anglers remains the same (two per angler per day). Captains, mates, and crew of charter and party vessels may not harvest the angler limits. The prohibition on young school bluefin remains the same as in the proposed rule.

Vessels in the Harpoon Boat category are restricted to one large medium per day. These vessels may land an unlimited number of giants, so long as the allowable quota for the category is

not exceeded. Vessels in the General category may take only one large medium or one giant per day. Purse seine vessels may land large mediums up to 10 percent of the total weight of giants on board.

Vessels permitted for the General and Incidental (rod and reel) categories may fish in the Angling category. If a large medium or giant tuna is caught by a vessel in the General category, it may be sold.

#### Other Changes from the Proposed Rule

The term "Regional Director" was proposed to be defined as the Director of the Office of Fisheries Conservation and Management (F/CM). In the final rule, the current definition of Regional Director is retained (Northeast Regional Director of NMFS, for Atlantic bluefin tuna) for all permitting and monitoring functions, while "Director" is used for the Office Director of F/CM.

In § 285.3, the prohibition in paragraph (f) against landing tuna with the head removed is revised to reinstate the requirement to land tuna in the round with fins intact, but to allow the fish to be gutted and the head removed. The prohibition proposed at § 285.31(a)(37) has been moved to § 285.3(h) and made applicable to all Atlantic tuna fisheries.

In the final rule, terms for new size classes of medium fish are added. The new size classes are defined and presented in the table at § 285.26. The "large medium" class defines fish smaller than giants that may be sold (178 to <196 cm).

In § 285.23(c)(1), the word "fishing" is added before "trip" because "fishing trip" is a defined term (at § 285.2). The word "caught" is substituted for "landed" to ensure that tuna landed from a longline vessel are actually an incidental catch.

Authority for the Assistant Administrator to adjust the daily catch limit in the General category from one to three giant bluefin is reinstated in § 285.24(a). Authority for adjustment of the bag limit for anglers on party and charter boats (from one to two school bluefin and back to one) is added at § 285.24(c)(2).

The prohibition at § 285.31(a)(10) is revised by adding the phrases "(fins intact)" and "eviscerated".

#### Comments and Responses

NMFS received numerous comments at the hearings and written comments submitted during the comment period on the proposed rule, many of which were adopted in the final rule and others that will be considered in future rulemakings. NMFS considered all comments

received during the comment period while formulating this final rule. Specific comments are discussed and responded to below.

Almost 300 oral and slightly over 200 written comments (not counting petitions) were received. Comments presented orally during the public hearings and written comments received during the comment period are summarized below. To assist the reader, where appropriate, the specific measures of the proposed rule are repeated verbatim in the same order as they appeared in the proposed rule. Some are not implemented by this final rule.

#### 1. Reduce the Total U.S. Quota Allocation by 10 Percent for the 2-Year Period 1992 Through 1993

**Comment:** Many commenters supported the 10-percent reduction in the U.S. allocation for the 2-year period because it is a step in the right direction and because it supports ICCAT's efforts. Other commenters, opposing the reduction, alleged the scientific data and, therefore, projections of stock decline, are inaccurate. Others opposed the measure because it does not reduce fishing mortality sufficiently to rebuild the stock or reduce the probability of stock failure. Many of these commenters suggested a 50-percent reduction, an additional 10-percent reduction, or restrictions on trade under the Convention on International Trade in Endangered Species (CITES).

**Response:** Under the ATCA, the United States is obligated to implement recommendations adopted by ICCAT and is prevented from implementing regulations that have the effect of increasing or decreasing a recommended quota. This measure was adopted by ICCAT during the November, 1991, meeting, based on the advice of the Standing Committee on Research and Statistics (SCRS) and the views expressed by member countries. Failure to implement this measure would be inconsistent with U.S. law. Therefore, no change has been made in the final rule.

#### 2. Spread the Reduction Equally Over the Years 1992 and 1993, Except for Subcategories of Fisheries That Have Begun Fishing Already in 1992

**Comment:** Several commenters objected to the proposal to spread the reduction equally over the 2-year period because they believed it contrary to recent amendments to the Magnuson Act and the ATCA. They contended that no reduction should be made in 1992, and the entire reduction applied in 1993.



This, they believed, would preserve the chance that reductions in fishing mortality would be achieved due to natural environmental causes, making mandatory reductions unnecessary. Others suggested the United States should implement the 2-year reduction in the same manner as Canada and Japan. Some commenters supported the spreading of the reduction as proposed.

**Response:** NMFS believes that dividing the reduction equally over the 2-year period, with some exception for categories well into their fishing season before this rule is implemented, is the least disruptive and most equitable to the resource users. Although "natural reductions" may occur, they are unlikely to occur in proportion to the subquota allocations or in sufficient amounts to effect the 2-year reduction that is required by the ICCAT recommendation. Instead, this rule credits quota overages or underages to the next year's allocation on a category-by-category basis. This will ensure the integrity of each category's allocation over the 2-year period. NMFS disagrees that this approach is contrary to the Magnuson Act or the ATCA. Further, it is not possible to implement the reduction in the same manner as both Canada and Japan; Canada has indicated it will implement the entire reduction in 1993 and Japan has indicated it is implementing two annual reductions in the same manner as the U.S.

### 3. Apply the Annual Harvest Amount Among the Categories Based on the Average Landings of Each Category During the Period 1983 to 1990

**Comment:** As discussed above, most commenters opposed the allocation among the permit categories based on average historical catch, although many seemed to object more to the results than to the calculation method. Many commenters believed the allocation would encourage fishing on mediums and generally result in shifting effort onto small fish, contrary to sound management principles. Other commenters expressed the view that spawning fish should be protected because they are essential to producing good recruitment. Some commenters contended that using historical averages to determine quotas is unfair to those who did not exceed the quota and rewards past overages at the expense of the categories that operate under more restrictions and enforcement coverage. They considered the effect on the General category to be overly restrictive and likely to shorten the season and that a disproportionate share of the burden of conservation is being imposed on this category. They cited the 31-percent,

rather than 10-percent, reduction to support their point. They believed cuts should be across-the-board, based on quotas; the same percentage applied to each subquota category. Other comments in support of this view were:

(1) The Northeast needs a large allocation of giants; mediums and small fish are less available there.

(2) Harvesting giant bluefin, versus smaller fish, increases the value.

(3) Commercial effort should be directed immediately away from smaller mediums. Only restricted commercial access should be provided to valuable "large medium" bluefin.

(4) NMFS should reduce fishing mortality of medium bluefin by precluding smaller mediums from being landed by General and Harpoon Boat category permit holders.

(5) NMFS should use scientific modelling to determine the effectiveness of this proposal.

(6) One giant equals many school fish in weight—therefore there is less total mortality associated with catching giants.

(7) The General category provided the best data; NMFS should increase the General category quota to provide better scientific monitoring.

(8) NMFS should emphasize harpoon and handline gear since they target only large fish.

(9) Increasing the Angling category is based solely on economics and not on (biological) science.

(10) Conversation should be based on the numbers of fish killed, not the weight.

(11) NMFS should not increase overall mortality.

(12) The allocation system in the proposed rule rewards past gross discards of small fish.

(13) Illegal landings are included in the historical averages.

(14) NMFS should not implement the reduction in a manner that reduces the ability of U.S. fishermen to achieve the available quota.

Many did not object to the basis for the reallocation, provided that adjustments were made, such as crediting the General category with catches of medium fish sold and including the most recent year's (1991) catch. Some stated that all medium bluefin should be allocated to the General category. One mistakenly believed that medium bluefin have historically counted against the General category and thought this should continue.

**Response:** NMFS believes it is reasonable, appropriate, and consistent with the four objectives stated in the

proposed rule and Environmental Assessment (EA) to distribute allocations based on recent performance in the fishery rather than the on quotas set almost a decade ago, which have proven inappropriate in some cases, and which no longer represent the present-day economic and social situations. NMFS has agreed with and accommodated many of the points raised during the comment period. For instance, preliminary 1991 catch data have been incorporated; an allowance has been made for sale of large medium fish, which are more valuable commercially, while smaller medium fish remain protected by the no-sale provision. NMFS has responded to commenters' concerns that historical landings by vessels permitted in the General category were incorrectly attributed to the Angling category. Accordingly, these landings have now been credited to the General category. NMFS has also responded to the concern that the General category fishery, which provides important scientific information and supports a great number of users, is being unduly restricted. NMFS has addressed this concern by allocating some of the historical reserve up-front to the General category. This also is consistent with past practice to use the reserve in fisheries that provide useful scientific information. Nothing in the final rule would preclude fishermen from taking the available quota.

**Comment:** Many commenters provided alternative allocation methods such as:

(1) Eliminating the Purse Seine category;

(2) Allocating to each category based on the number of jobs;

(3) Giving the Inseason adjustment amount (reserve) to the Angling category and nothing else;

(4) Placing charter boats in a separate category; and

(5) Combining the Angling and General categories.

**Response:** NMFS has not allocated according to these suggestions for several reasons. First, the impacts of some of these alternatives, which could be substantial to a particular category, were not explored prior to or during the proposed rule, and, as such, did not receive sufficient public review. Elimination of one or more of the categories would be inconsistent with the objective to minimize displacement and preserve traditional fisheries. NMFS believes the reasons why the charter boat category was eliminated in the early 1980s are still valid.



*Comment:* Some commenters questioned whether NMFS has the authority to change the allocations under the ATCA and claimed that NMFS should have followed the Magnuson Act process.

*Response:* The ICCAT requirement for 10 percent reduction meant that NMFS had to change allocations from what they had been in the past. The authority to promulgate regulations appropriate and necessary to carry out the recommendations of ICCAT is granted by the ATCA and NMFS followed the full process required. This broad authority enables the Assistant Administrator, who has been delegated the responsibility within the Department of Commerce, to determine what is necessary to implement the recommendations. This authority has been recognized by the courts (see *Tri-Coastal Seafood Coop. v. Richardson*, No. 76-2316-G, CD. Mass. Hearing transcript June 23, 1976).

*Comment:* One commenter questioned whether the purse seine and Gulf of Mexico incidental fisheries are contrary to NMFS' own objective to "maximize use and spread the resource to as many users as possible."

*Response:* Elimination of any of the domestic categories was not an option in the proposed rule and is not implemented in this final rule.

*Comment:* Some commenters focused on the Incidental category by pointing out that reducing incidental quotas only results in increasing discards, that the longline quota should be adjusted to reflect current participation, and that the Incidental category is being hurt economically by this rule. One commenter requested a detailed explanation of how incidental reductions were calculated and believed that the "Incidental category for miscellaneous 'Other' gears should receive its historical catch of less than 1 mt."

*Response:* NMFS recognizes the constraints on the Incidental categories but does not believe these allocations require further adjustments beyond the scheme based on historical catch, with one exception for miscellaneous gear. This rule should not impose more than minimal economic hardship to this category and may actually improve conditions in the northern area of the Incidental longline category by correcting the practice of subtracting southern area overages from the total longline quota. Instead, overages will be subtracted in the following year from the category, or subcategory if appropriate, responsible for the overharvest. NMFS does not agree that the Incidental category for

miscellaneous catches should be reduced to less than 1 mt, because that amount would roughly equate to four fish. NMFS has set this allocation at 4 mt, which should prove sufficient.

*Comment:* A great many commenters indicated that NMFS was showing bias for or against a particular category or sector of the fishery. Comments to that effect were:

(1) NMFS should send an unbiased representative to the public hearings.

(2) The proposal was a ploy to eliminate commercial fishermen.

(3) The current quota system was working—do not change it.

(4) NMFS is trying to put the different categories against each other and favors recreational over commercial interests.

(5) NMFS "portrayed" the reduction as a 10-percent across-the-board cut.

(6) The proposed allocations are to make up for NMFS's inability to control other categories.

(7) The proposal allocated arbitrarily from New England to the Mid-Atlantic region.

(8) NMFS is being deceptive, and is "turning" on people that make the fishery work.

*Response:* NMFS believes the final rule has been responsive to a wide range of views and comments; more detailed explanations for actions taken in this rule are explained in responses to other comments.

#### 4. Reduce the Allowable Catch of Bluefin Less Than 115 cm to no More Than 8 Percent of the Annual U.S. Quota

*Comment:* While many commenters supported the proposed rule, there were also numerous commenters who opposed it. In general, the primary opposition came from mid-Atlantic commenters who claimed that fish of this size are just about all that are found in the area, and that such a drastic measure would cause undue economic hardship because of a loss of fishing trips/charters that sportsmen made. Many commenters claimed that this economic hardship would have a "ripple effect" throughout the region as businesses associated with this industry (marinas, hotels, tackle shops, etc.) felt the effect of the decline in recreational fishing. The primary support for this rule came from north Atlantic commenters who claimed this measure was necessary to protect future spawning stock. Following are specific comments received in opposition:

(1) The measure is insupportable when there is such a high fishing rate on giants.

(2) The proposal would put people out of business.

(3) NMFS should allow retention of these fish in the Angling category.

(4) The 8-percent limit for fish less than 115 cm should be on the total harvest, not by country.

*Response:* Each of these comments is beyond the scope of this rulemaking. ICCAT has mandated that there be no landings of bluefin less than 115 cm. ICCAT also provided discretion that a country may allow a tolerance of no more than 8 percent of its national quota. Under the ATCA, the United States is obligated to implement recommendations adopted by ICCAT. This measure was adopted during the November, 1991, meeting, based on the advice of the Standing Committee on Research and Statistics (SCRS) and the views expressed by ICCAT member countries. Failure to implement the limitation would be inconsistent with U.S. law; NMFS has minimized the impacts to the extent possible by providing the 8-percent tolerance and establishing two subquotas for school bluefin.

*Comment:* One commenter stated that purse seiners need some incidental allowance for the take of bluefin less than 115 cm while fishing for skipjack; fishermen cannot guarantee that some small bluefin will not mix with skipjack.

*Response:* NMFS agrees with this comment and has added a provision to the Incidental catch section to accommodate this. Vessels in the Purse Seine category fishing for other tuna species will be allowed a 1 percent-per-trip (by weight) incidental take of bluefin less than 178 cm. Any landings of these incidental catches may not be sold, but will be counted against the Purse Seine category quota.

#### 5. Prohibit Sale of Bluefin Less Than 196 cm (77 Inches)

*Comment:* As with most of the major provisions of the proposed rule, NMFS received many comments on this proposal. Many commenters were concerned with the potential waste of medium fish that would be caught and so exhausted by the struggle (or wounded by a harpoon) that many would die. Other comments pointed out the difficulty of distinguishing the size of a fish while it is in the water. Most General category fishermen and some charter boat fishermen opposed the ban on sale of medium and smaller fish. Some comments addressed the age at which spawning first occurs, where spawning occurs, and using the spawning size as the no-sale cut off. Summaries of specific comments received in opposition follow:



(1) NMFS should allow two mediums per General category boat.

(2) The proposed regulations ignore the working class; there is profit in catching and selling mediums.

(3) There is a large mortality on released mediums; it is hard to tell the difference between large mediums and small giants, resulting in a waste of fish.

(4) The provision against sale of mediums and large school fish goes beyond the ICCAT recommendations, is unique to U.S. fishermen, and may be illegal.

(5) Some fishermen questioned the rationale behind the proposal—many fish would be sold illegally, especially if enforcement is lacking.

(6) Sport fishermen probably cannot boat and tag a medium without high mortality because they lack the technique to quickly boat a medium.

(7) The ban on sale of mediums would wipe out the Cape Cod fishery.

(8) Mediums are often sold.

(9) The size categories should be redefined.

(10) If sport anglers cannot sell, then they will kill just for sport.

(11) People could be injured trying to measure a bluefin while the fish is in the water.

(12) NMFS should reduce the size limit to 60 inches and fishermen can tell the difference.

(13) NMFS should set the no-sale limit at 65 inches and allow one medium to be caught by commercial fishermen.

(14) NMFS should set the no-sale limit at 66 inches—this would protect some 6-year old fish. Age 6 is the earliest age at which 50 percent of the female cohort could reach sexual maturity.

(15) NMFS should set the no-sale limit at 68 inches (220 pounds).

(16) NMFS should set a 70-inch cut-off to prevent waste.

(17) NMFS should prohibit retention of fish less than 68 inches in the General and Harpoon Boat categories.

(18) The sale of fish is important to charter boats.

(19) Recreational fisherman sell large school and medium fish; recreational fishermen should be allowed to sell fish.

(20) Fishermen need to sell medium fish to offset fuel costs.

(21) Purse seiners should not be allowed an incidental take of mediums.

A few commenters supported the proposed ban on sale as a good conservation measure. Specific comments were:

(1) The proposal is absolutely necessary—it makes sense to reduce the kill of fish nearing breeding age.

(2) No sale below 77 inches would be acceptable with a one medium fish allowance.

**Response:** NMFS agrees, in part, with those who opposed the ban on sale of tuna less than 77 inches (196 cm) and is revising the final regulations to prohibit sale of tuna less than 70 inches (178 cm). NMFS is concerned with the potential waste of tuna. On the other hand, NMFS is very concerned about the high level of fishing mortality on medium bluefin tuna and continues to believe that giant tuna of 77 inches (196 cm) or more should remain the target for directed fisheries and commercial sale. Eliminating tuna below 70 inches (178 cm) from the commercial fishery—even though ICCAT recommendations allow commercial harvest to 45 inches (115 cm)—will reduce the incentive to harvest these fish and also help reduce the fishing mortality rate on these immature bluefin tuna that are about to enter the very low spawning stock biomass. There has not been a good year class since the early 1970's; rebuilding the spawning stock biomass may be crucial to enhance spawning potential. Also, from an economic and biological standpoint, the smaller the fish, the less the fish is worth per pound and the greater the probability that the fish can be released alive. Thus, future commercial value may be enhanced.

The problem of judging the size of the fish while in the water is almost impossible to solve. NMFS looked at catch data and data on fish sold to determine if there are any natural breaks in size distribution of fish landed that would be an appropriate cut off to help reduce incidental take of medium bluefin. The size distribution for fish sold in 1990 and 1991 showed that there were some size ranges in which substantially fewer fish were landed (between 211 and 250 pounds (96 and 113 kg)). Any cut-off means fish just below the minimum size will be caught and released, with some mortality. This allowance for sale of bluefin tuna between 178 cm and 196 cm is to provide a margin of error for commercial fishermen who pursue giants. The scientific rationale for no-sale, to reduce the fishing mortality rate on immature bluefin and rebuild the spawning stock biomass, has not changed. Information from scientists (see comments below on a paper by Baglin) support the break between immature bluefin and spawners at about 196 cm, with the smallest size for possible first spawning at 190 cm.

The short-term economic impact of reducing the size limit pertaining to the ban of sale is difficult to predict. The general effect is to increase the probability of reaching the quota—thus shortening the season. To the extent that the quota is filled with fish worth less

per pound, revenues will decrease. But, to the extent that fishermen can keep a fish that otherwise would be released, the costs of fishing also decrease. On balance, NMFS judges that the change from the proposed rule will be positive, especially because of the allowance for large mediums in the giant fisheries and the potential reduction in the fishing mortality rate on immature bluefin tuna because of the no-sale provision of fish less than 178 cm. Large medium bluefin tuna caught incidentally that otherwise would be "dumped" will now count against the quota. Bluefin less than 178 cm will not be targets of commercial fishermen, thus there will exist a potential for reduction in fishing mortality relative to the average commercial catch of these fish sizes in previous years.

One commenter suggested applying a biological criterion for establishing an acceptable minimum size for sale of bluefin. Specifically, the commenter suggested using the median size (age) at first reproduction as an acceptable minimum size. Applying a minimum size that effectively restricts harvest of fish smaller than the median size of first reproduction has the desirable effect of providing enhanced probability of a fish reaching spawning size, and thus can contribute to conservation of the resource. Although this criterion might be supported from a resource conservation perspective, it is not apparent that the specific minimum size recommended by the commenter is supported by available data.

The comment referenced Baglin (1980) in support of the statement, "Age six is the earliest age at which 50 percent of the female cohort could reach sexual maturity." Although a complete citation was not given, the appropriate reference is more likely Baglin (1982, Reproductive biology of western Atlantic bluefin tuna. Fish. Bull., U.S. 80:121-133), in which Baglin states, "My analysis of western Atlantic bluefin tuna ovaries indicates that age 6 would probably be the earliest age at which a majority of females could possibly reach maturity" (emphasis added). Although the cited author acknowledges this possibility, he also states that the available observations suggest that it is unlikely that fish of a size corresponding to age 6 contribute to the spawning success of western Atlantic bluefin.

The size frequency observations from fisheries operating in the region suggest that medium-sized fish are generally not available in the Gulf of Mexico. Given the available data, the apparent minimum size of first reproduction (which may be smaller than the median



size at first reproduction) may be better approximated by the smallest female from the known spawning grounds histologically examined by Baglin. Baglin's table 3 suggests that this minimum might be as small as 190 cm (74.8 inches) snout to fork length (SFL).

**6. Angling Category Subquotas, Differential Bag Limits, Captain and Mate Exclusion, Further Protection of Small Fish**

A variety of comments were received on these issues. Individual or similar comments are responded to as follows.

**Comment:** NMFS should increase the angler bag limit to 3 to counteract the new size restriction.

**Response:** NMFS disagrees. The purpose of the bag limit is to slow the fishery so that many anglers have an opportunity to catch bluefin. Lengthening the season will provide some assistance to the charter and party boats and other support industries involved in the bluefin fishery.

**Comment:** The bag limit should be 2 school bluefin per person per day or one large school bluefin per day.

**Response:** NMFS disagrees. The ICCAT-mandated quota for school bluefin is the most restrictive aspect of the regulations. Raising the school fish quota would shorten the season even further. The option suggested of "or one large school" would result in waste if the first fish landed was a school fish.

**Comment:** NMFS should stop the commercial charter boat fishery by limiting the number of fish per boat.

**Response:** NMFS disagrees. The regulations attempt to distribute a limited number of fish equitably. NMFS has no desire to exclude any sector of the existing fishery.

**Comment:** The limit of one school bluefin per person is not realistic; revisit the young school limit.

**Response:** NMFS disagrees. Given the limited total national quota of school fish (100 mt), one school bluefin per person per day is not unreasonable. As discussed above, NMFS is trying to spread a small quota as much as possible.

**Comment:** NMFS should reduce medium limits to one per boat per day. NMFS should establish bag limits of two mediums per boat per day. Two mediums for anglers is excessive; the limit should be one per day.

**Response:** NMFS agrees with a daily limit of one medium. One medium bluefin, when dressed, could easily weigh 120 pounds (54 kg). Six anglers sharing one medium bluefin will have several meals for average sized families and some left over to give to friends. Tag and release fishing is available to

provide the fishing experience, would contribute to bluefin scientific studies, and make the angler tagging or recapturing a bluefin eligible for a reward as well as contributing to conservation of the resource.

**Comment:** Private boats have expenses similar to charter boats and need more than one school fish per day. Private boats have to travel distances off shore similar to charter boats and would be allowed to keep only one fish.

**Response:** NMFS recognizes that one school fish per day in some areas is restrictive. The final regulations allow two school fish per private boat per day.

**Comment:** How will captains and mates be treated in the Angling category? Are they counted in the bag limits? Captains, mates, and crew should not be counted as anglers.

**Response:** NMFS did not intend in its proposed regulations to leave a loophole whereby captains, mates, and crew would be considered anglers. Although most captains and mates would not fish, "extra" fish removed from the charter boat by the captain, mate, and crew and given later to the passenger, would, in effect, allow an angler more fish per day than intended. The final regulations clarify that captains, mates, and crew are not anglers for purposes of determining the total number of bluefin that a charter or party boat can land.

**Comment:** Fish in the 100-300 lb (45-136 kg) range need the most protection and catches in that range should be cut by 50 percent.

**Response:** NMFS agrees that this range does need more protection. The ban on sale of small mediums plus the lower bag limits are intended to lower mortality in this range, although the reduction will probably not be 50 percent.

**Comment:** NMFS should protect the recruits because they are the future spawners. Fishing should be allowed only on large fish.

**Response:** NMFS realizes that recruits represent future spawners and that large medium and giant fish are spawners. Measures in this rule, however, are intended to reduce fishing mortality on all age classes of bluefin.

**Comment:** There is a need to clarify and reword the daily limits for charter and party boats.

**Response:** NMFS agrees. Wording of the proposed regulations was difficult to understand. The text has been clarified and, as an aid to the reader, the following table explaining the bag limits has been prepared.

**BAG AND BOAT LIMITS**

Size	Party—charter boats	Private boats
Young School	None	None
School	1/Angler/Day	2/boat/day
Large School	2/angler/day *	2/angler/day *
Small Medium	1/boat/day	1/boat/day
Large Medium and Giant	1/boat/day **	1/boat/day **

\* The basic catch limit of two fish per angler per day cannot be exceeded, i.e. two large school bluefin only if no school or no small medium bluefin are caught.

\*\* Vessels must have a permit. In the Angling category, captains, mates, and crew of charter and party boats are not allowed to fish under the bag limits. There is no sale of school, large school, and small medium bluefin.

**Comment:** There is no need for differential limits—the proposed rule contains no statistical data to support differential bag limits. This proposal should not become a precedent-setting distribution basis.

**Response:** NMFS disagrees. Private boats and charter boats both provide anglers with a fishing experience. In addition, charter boats represent employment for the captain and the mate. To protect jobs, NMFS judges that the differential is warranted. Given available information, it is apparent that even with restrictive bag limits to control the landed catch of these fish to allowable levels, closure of the fishery may still be required. Although there is some chance that the fishery will not reflect the bag-limit analysis (based on prior year information) and landed catch might not exceed the allowable levels under the final catch limits, NMFS has no analysis available that indicates the likelihood of these outcomes. The likelihood of closure cannot be ruled out under more restrictive bag limits; however, the expected season length under more restrictive bag-limit scenarios would likely be longer than under the limits chosen.

**Comment:** Some fishermen would not pay a \$200 charter fee for only two tuna.

**Response:** NMFS realizes that some anglers may choose alternatives to fishing from a charter boat under the new restrictions. The extent of the shift, if any, is unknown. The basic angler bag limit is unchanged in the final regulations. Charter boat owners, we anticipate, should benefit from a longer season.

**Comment:** NMFS should allow the charter and party boat group to sell up to three giant fish per week.

**Response:** The change in the final regulations that allows fishing in both the General category and the Angling category will allow charter and party boats to land one giant per day



provided the vessel has a General category permit.

*Comment:* All party and charter boats should be allowed to sell medium fish if the General category is allowed to sell medium fish.

*Response:* Anyone with a General permit, including charter and party boat captains, may sell the newly-defined "large medium" fish. No one may sell bluefin smaller than a large medium.

#### 7. Prohibit Retention of Young School Bluefin (Less Than 66 cm, 26 Inches)

*Comment:* Almost all commenters agreed in principle with the measure precluding the retention of bluefin less than 26 inches (66 cm). Some believed the retention limit should be raised, e.g., to 45 inches (115 cm) or 66 inches (168 cm) to increase conservation benefits.

*Response:* The 26 inch (66 cm) size limit is based on a size limit imposed by ICCAT for the eastern and western Atlantic bluefin tuna fisheries. NMFS does not believe that the minimum size for retention should be raised further in consideration of the other restrictions imposed by this rule.

#### 8. Preclude Vessels Permitted for Other Categories From Fishing in the Angling Category and Angling Category Vessels From Fishing in Other Categories

*Comment:* Most commenters opposed the proposed regulation. Those most in opposition were charter boat owners who fish commercially when they do not have passengers. The proposed measure would have forced this group to choose between two alternative occupations. Other comments included:

(1) Mediums should not be sold out of commercial categories (i.e., in the Angling category).

(2) The proposal is unenforceable.

(3) The proposal will result in a high release mortality.

(4) General category vessels will be precluded from landing mediums. This is another form of reallocation to the mid-Atlantic.

(5) NMFS should count mediums against the General category.

(6) Fishermen will need to turn in their permits. The \$20 fee should be refunded to everyone.

(7) With the proposed rule changes, some fishermen will not know which category to choose.

(8) What is meant by "no economic gain?"

(9) Will traditionally recreational boats be required to outfit as commercial boats with safety gear if they retain a General category permit under these proposed regulations?

Some supported the proposal, advocating a greater separation

between the commercial and the recreational categories.

*Response:* NMFS is convinced by the arguments of those who opposed the proposed measure and has not included a "one category" provision in the final regulations. The economic consequences to that unknown number of individuals who are involved full time in the fishery—partially as a charter boat captain and partially as a commercial fisherman—could be severe. The proposed measure would have been unfair to those who recently renewed permits but had a low expectation of catching a large medium or giant bluefin and would have had to turn in the permit to fish recreationally for smaller fish. The regulation would not have been unenforceable, but would have been difficult to enforce. Individuals might have been motivated to claim they had never received their permit if they landed smaller fish. However, allowing individuals to fish in both the General and Angling categories will have the effect that the quotas in those two categories will be reached sooner. There will not be a separation between the two categories, but there will be no sales by General category fishermen recorded against the Angling category. "No economic gain" in the ICCAT recommendation has been interpreted by NMFS to mean no sale of school fish. Questions concerning safety gear on vessels should be directed to the U.S. Coast Guard.

#### 9. Implement a Mechanism to Subtract Quota Overages From the Appropriate Category in Following Years if the United States Exceeds its Allocation

*Comment:* Many commenters supported the concept of subtracting overages from the category responsible for the overage. Some commenters objected to the mechanism and suggested that this occur only in the case of the United States exceeding its national allocation. Many commenters stated also that underharvested amounts should be credited in the following year to the categories that were under quota. One commenter stated that a category that blatantly overfishes its quota should be closed permanently.

*Response:* NMFS generally agrees with the commenters, excepting the comment regarding permanent category closure, and has implemented a mechanism to credit suballocation overages and underages by category or sub-category during the 2-year period. As explained above, the proposed measure has been modified to provide that adjustments will be made in 1993 for any overage or underage in any

category or sub-category, whether or not the national quota is exceeded. NMFS maintains that this is consistent with the intent of ICCAT to provide that the full 2-year amount be available for harvest.

#### 10. Eliminate the Adjustment to Multiple Catches Per Day in the General Category

*Comment:* Most commenters favored restoring the Office Director's flexibility to raise the daily catch limit in the General category to as many as three fish. Some comments were:

(1) NMFS should retain the option—it is needed to get close to the quota.

(2) There is no reason to use it if fishermen are nearing the quota but NMFS should retain the option.

(3) The proposal impacts the ability to achieve the quota.

(4) NMFS should start the General category season at two fish per day.

(5) The multiple catch adjustment has never done any harm.

Those favoring the proposed regulations argued that NMFS should eliminate the flexibility because the scientific monitoring allocation under a moratorium does not require that the last fish in the allocation be landed. It serves no scientific monitoring purpose and should be eliminated.

*Response:* NMFS concludes that the Office Director's flexibility should remain. Although NMFS agrees that scientific indexing does not require that the "last fish in the allocation" be caught, NMFS wants to provide fishermen a reasonable opportunity to achieve the quota. Flexibility in the daily limit will contribute to that. Starting at two fish per day, as suggested, however, might work to the fishermen's disadvantage if the season has to be closed early in the fishing year. Starting at one giant bluefin tuna per day should provide the greatest opportunity for a longer season. At the start of the season, fish are small and worth less per pound. Raising the daily limit at the end of the season, if warranted, may increase fishermen's gross revenues.

The following comments also were received and although they do not specifically apply to the ten measures of the proposed rule, are generally relevant. They also are titled for clarification.

#### 11. Inseason Adjustment or Reserve

*Comment:* Some commenters stated that the criteria for distributing the reserve should be based on the scientific usefulness of data collected from a category and the estimated amounts by which other categories may exceed their



quotas. Others stated that the reserve should be shared among all categories. Several noted that the General category has never received any reserve; in the past it was used for the Angling category. Some pointed out that the reserve should be used in the Incidental longline category also.

*Response:* NMFS agrees that the first priority for the use of the reserve is for scientific purposes and for this reason has allocated 54 mt to the General category, where it should provide the best use for monitoring the spawning stock biomass. NMFS will retain the flexibility to use the rest of the reserve as conditions in the fisheries warrant.

In reference to where the reserve has been used in the past, NMFS has used it to extend the seasons for the General and Harpoon Boat categories.

## 12. Enforcement and Observers

*Comment:* While enforcement and observer coverage are not precisely within the scope of this rulemaking, they are issues that many commenters believe are important factors in understanding the problems that are associated with the fishery. There was agreement by many commenters that overall enforcement of bluefin tuna regulations was not effective, and that NMFS and other entities responsible for enforcement should increase their strength and presence in the field. A vast number of commenters believe that, in particular, the recreational fishing segment needs far more coverage than is being attempted. Many commenters believe that proper enforcement for the Angling category was, in fact, nearly impossible due to its diffuse nature. Some commenters stated that there should be more observer coverage in the fishery, especially in certain categories, particularly the purse seiners. Some specific comments received on enforcement and observer coverage follow:

- (1) NMFS should put observers on all vessels, especially the purse seiners.
- (2) NMFS should monitor for black market sales to restaurants.
- (3) NMFS cannot police the small fish catch and should do a better job.
- (4) Historically, there has been differential enforcement in the categories.
- (5) The Angling category is not controlled compared to the other directed categories.
- (6) Enforcement is a problem.

*Response:* NMFS now has a new division for highly migratory species (HMS) management and a Special Agent in Charge for HMS is being created. With this new focus on HMS, NMFS anticipates better monitoring and

enforcement in all categories. Any problems observed in these areas by fishermen should be reported to NMFS immediately.

Other comments received on enforcement and observer coverage were:

- (1) NMFS should license every boat and fisherman and charge fees of \$25-50/boat or \$10/person.
- (2) Fines should equal \$25,000.
- (3) There is a need to resolve the liability issue with observers.
- (4) One commenter states that he had nothing against observers on his purse seiner but felt it would be a waste of taxpayer dollars.
- (5) NMFS agents should be required to dress so that people can readily identify them.

*Response:* None of these comments is within the scope of this rulemaking.

## 13. Comments on Data Collection and Monitoring

*Comment:* Many comments were received regarding the adequacy of data collection used to monitor and enforce the fishery. Several commenters believed an accounting of the small bluefin catch cannot be accomplished. Some questioned the validity of the scientific assessments or the biological reference points used by managers.

An associated concern is the lack of a permit requirement in the Angling category—both commercial and recreational fishermen agree there is a need for permits in all categories. Some suggested improvements were to: require weekly reports; work closer with the recreational fishermen to collect data; tag all bluefin, including those caught recreationally; allow logbook reports to be faxed; require a 50-percent income eligibility for General category permits; charge \$100 for permits and use the fees collected for management; use aerial surveys; and have a call-in number (fax) for landings.

Other specific comments were:

- (1) Estimates of the small fish catch are low.
- (2) Estimates of the small fish catch are high.
- (3) NMFS has been unwilling to use aerial surveys or anecdotal evidence provided by fishermen and pilots.

*Response:* The data and assessments that NMFS uses to derive decisions for bluefin tuna and other large pelagic species governed under the ATCA are considered the best available. Every effort is made to assure their accuracy through the process of review by the national and international scientific community via the ICCAT assessment process (SCRS). Although NMFS scientists take lead roles in both data

base development and assessment analyses, these tasks are conducted in an international forum and are subjected to the rigors of international scientific debate before they are accepted as the best available information. That is not to say that there is no uncertainty in the basic data and assumptions used in the assessments. Indeed, by using risk assessment methods, which incorporate the identified uncertainties and possible biases into assessment analyses, NMFS and ICCAT have strived to assure that assessment results and management advice consider these uncertainties so that decisionmakers can weigh the risks of their decisions.

NMFS agrees with the concepts of having permits for all vessels fishing for bluefin and tagging all bluefin landed. These suggestions will be addressed in a future rulemaking.

To the degree that fishermen's observations can be quantified, they are incorporated into the assessment analyses. In fact, scientific surveys of the angling fleet provide a basis for both indexing abundance of bluefin tuna and for estimating the harvest levels for some age classes in the stock. These surveys have indicated that catch rates of medium bluefin increased over the period 1987-1990, a feature consistent with observations reported by various fishermen. Although catch rates from these surveys increased over the time span indicated, the hypothesis that the increase was due to increased abundance was not supported by the analysis; it is not clear whether the observed increase was due mainly to increased availability, increased abundance, or some combination of these factors. Although these data were not considered appropriate for a base-case assessment, these observations, and several other sets of observations from other fisheries, were incorporated into analyses at the most recent bluefin assessment. They were used to examine the sensitivity of the assessment results and support the conclusion that the trends in estimated bluefin abundance were relatively insensitive to these observations.

Some fishermen believe that the assessments are inaccurate, since they have been seeing in recent years more bluefin, especially "mediums" and "small giants," an observation they believe is at odds with the most recent assessments. The assessments conducted over the last several years have, in fact, indicated increases in the abundance of age groups of bluefin that are categorized as mediums (ages 6-7) and small giants (ages 8-9) relative to



the lowest abundance levels estimated for these age groups in 1982, the first year of ICCAT's restrictive harvest recommendations. However, taking into account current levels of harvest from these age groups and the relatively poor recruitment to the stock since 1987, it appears unlikely that the increased abundance levels for these ages will be sustained.

NMFS has promoted the application of fishery-independent methods for indexing abundance of bluefin and other fishery resources. Aerial and shipboard sampling surveys have been applied for estimating the abundance of numerous marine species, and NMFS has been a leader in the scientific development and application of these techniques for resource assessments. A NMFS-conducted fishery-independent shipboard survey of bluefin spawning success in the Gulf of Mexico was utilized by ICCAT for assessments of stock status. Fishery-independent aerial surveys for western Atlantic bluefin have not yet been implemented, due to the limited available resources for conducting such a survey for wide-ranging species like bluefin. However, NMFS has been working with commercial fishing industry representatives, including spotter pilots, to collect data that would allow evaluation of fishery-dependent spotter pilot data for developing a consistent time series for indexing bluefin abundance.

#### 14. Procedural/General Comments

*Comment:* There was a widely accepted belief that the process for this rulemaking was being expedited, and that the associated comment period was too short. Associated with this opinion were the ideas of many commenters that the proposed rule constituted a major rulemaking, and should therefore require a full public process under the Magnuson Act, as amended. Also, many commenters believed that not enough notice or lead time was given to the interested parties so that they could get properly prepared and organized. One commenter felt that the EA was inadequate and that there should have been a longer comment period on the proposed regulations. Another believed an Environmental Impact Statement (EIS) should have been prepared and requested a longer comment period.

*Response:* NMFS disagrees with these comments. During December, 1991, and January, 1992, NMFS held four scoping meetings to inform the public and initiate discussion of options to implement the November 1991 ICCAT recommendations. A proposed rule was prepared based on comments received.

Subsequently, eight formal hearings and one informal hearing were held on this draft rule during April and May, 1992. On April 28, 1992, NMFS published a proposed rule at 57 FR 17872 to amend the regulations governing the Atlantic bluefin tuna fishery. Public comment on the proposed rule was invited through May 26, 1992; comments received at a Congressional hearing on May 27, 1992, also were considered. All sectors of the fishery were represented at these meetings. Hundreds of oral and written comments with very thoughtful and constructive suggestions were received during the comment period, demonstrating that fishery interests did have adequate time to respond to the proposed rule.

NMFS believes that the EA and the finding of no significant impact are appropriate for this action. NMFS intends to prepare an EIS (which will assess the impacts of the bluefin tuna fishery on the environment) during development of a fishery management plan for tuna, under the Magnuson Fishery Conservation and Management Act.

*Comment:* A widespread belief exists that NMFS should have a process document in place for management of HMS before it attempts a rulemaking of this magnitude. Complaints were made that unlike the Fishery Management Council process, it was not known who the policymakers are.

*Response:* NMFS disagrees with this comment. This action is required to implement the recently adopted recommendations of ICCAT and to improve management of the bluefin tuna resource. NMFS has complied with the procedural requirements of the ATCA and the Administrative Procedure Act (APA), 5 U.S.C. section 553, and has augmented those procedures by holding scoping meetings. The process document referenced in the comments has been published in proposed form at 57 FR 22718, May 29, 1992. It establishes proposed procedures mainly for the development of fishery management plans and amendments under the Magnuson Act but consistent with the ATCA, not the solely ATCA rulemaking that is at issue here.

*Comment:* There was disapproval of the way in which the public meetings were scheduled and run. Many people voiced dissatisfaction with the size of the room at the Portsmouth, New Hampshire, meeting. Several commenters felt that representation of NMFS at the meetings was inadequate, and that NMFS should have had more, different, and/or higher-ranking officials present. Some individuals felt that

simply taking notes and having tape recordings of the proceedings were evidence that NMFS was not interested in what they had to say, and that there should have been a stenographer present. Numerous comments were also made as to the time of day at which the hearings were held, with many people saying that people were being denied the right to speak because of the late hour. Others complained that fishermen from outside the hearing area dominated time that should have been given to local residents and local issues.

*Response:* Scheduling of the meetings was done in close consultation with representatives of the various fishing interests involved. Every effort was made to ensure that adequate room and time existed to guarantee that everyone who wanted to speak had a chance. Because of the interest in the matter being discussed, the meetings often lasted several hours in length. However, while it was necessary to limit some people in the amount of time they were allotted to speak, and other people chose not to stay until they were given a chance to speak, no one who wanted to speak was denied the opportunity.

At the first public meeting in Portsmouth, New Hampshire, the same room was chosen for the meeting that is used for New England Fishery Management Council groundfish hearings. The size of this room was deemed adequate when the public hearings were scheduled. However, as NMFS became aware of the fact that more room was going to be needed, efforts were made (also in conjunction with representatives of fishery interest groups) to find a larger place. None could be located in the short time left before the meeting. Fortunately, at all the rest of the meetings, NMFS was able to provide for larger rooms.

The ATCA does not specify what level of agency representation must be present at the public meetings. The person who was in charge of the public meeting process, Mr. Richard Stone, and who attended every meeting, is the person primarily responsible for coordinating management activities for HMS within NMFS. Accompanying Mr. Stone to most meetings were one or, in some cases, both of the people who work with Mr. Stone in the Highly Migratory Species Management Division of the NMFS Office of Fisheries Conservation and Management.

The use of note taking and tape recordings was well within the requirements of ATCA and the APA. The meetings were scheduled for evening hours to assure that people who wanted to come, but who had to work



during the day, would have the opportunity.

The problem with commenters from outside the hearing area first occurred at the Long Island, N.Y. hearing. Following that hearing, every effort was made to accommodate local residents and those that had to leave early. These comments also will be addressed in the final HMS process document.

**Comment:** This rulemaking conflicts with President Bush's announcement of a moratorium on regulations that affect businesses. The President will choose jobs when faced with a choice between jobs and the environment.

**Response:** President Bush's announcement of a moratorium on new regulations that are restrictive on businesses cannot, and does not, apply to regulations that are required by law to be implemented during the period of the moratorium. The ACTA provides a de facto deadline. Under the ATCA, the United States is obligated to implement recommendations adopted by ICCAT. Failure to implement enacting regulations would be inconsistent with U.S. law.

**Comment:** NMFS should have had a public meeting in Maine; Portland was suggested as a possible site.

**Response:** After receiving requests from fishermen at our hearing in Portsmouth, New Hampshire, for a hearing to be held in Maine, NMFS immediately scheduled and held a hearing, on the advice of several commenters, in Portland, Maine, on May 21, 1992. NMFS agreed that a hearing there would be important to ensure that all views were presented.

**Comment:** There is a need to know the final rules as soon as possible.

**Response:** NMFS agrees with this comment, and has worked to publish this rule as quickly as possible while thoroughly considering all comments and making the final rule as equitable as possible for fishermen while protecting the resource.

**Comment:** The proposed rule was changed from that presented at the scoping meetings; only having "three" scoping meetings was inadequate.

**Response:** Scoping meetings are for the purpose of receiving public comments and suggestions on possible solutions to a problem that is to be addressed in a proposed rulemaking. It is not the intent, nor is it usually possible, to describe the exact language of a proposed rule at scoping meetings. The public has the opportunity to respond to the exact language of the proposed rule during the public comment period.

NMFS believes four scoping meetings were adequate. They were held in

locations calculated to enable fishermen from all categories to participate and provide input.

**Comment:** There was not enough notice given that the proposed rule had been changed from what was anticipated at the scoping meetings, and what the schedule of the public meetings would be.

**Response:** NMFS is required to publish the proposed regulations in the *Federal Register* in advance of the public meeting and the final rule. However, in order to ensure that as many people were informed of this proposed rule as possible, NMFS also sent out a press release and conducted a mailing to permitted Atlantic bluefin tuna fishermen on or about April 25, 1992. Because the Angling category is a non-permitted fishing category, and marine recreational fishermen are generally unlicensed along the Atlantic coast, there was no way to include in the mailing people who fish only in that category, but Angling category representatives were notified.

**Comment:** NMFS does not devote enough time, resources, and personnel to the HMS issue.

**Response:** As was mentioned earlier, NMFS now has a new division for HMS management and a Special-Agent-in-Charge for HMS is being created. With this new focus on HMS, NMFS anticipates better monitoring, response to fishery interests, and enforcement in all categories.

**Comment:** NMFS should not hold public meetings for bluefin during the new and full moons.

**Response:** NMFS will make every effort to accommodate every fishery interest. However, sometimes, as in this case when fishermen from different fisheries with opposite needs are involved, that is not possible.

**Comment:** NMFS plotted to lose the *Montauk Boatman's and Captains Ass'n v. NMFS* lawsuit.

**Response:** This comment is beyond the scope of this rulemaking; however, NMFS notes that the Government won the lawsuit.

Some specific comments received on procedural and general issues follow:

- (1) NMFS should pay attention to information from bona fide fishermen;
- (2) The proposed rule is inconsistent with the ICCAT recommendations because the quota is specifically a scientific monitoring quota and the purse seine allocation does not provide any useful scientific information;
- (3) The Gulf of Mexico should be closed and catches should be sampled across the spectrum of all age classes;

(4) Because fishermen don't know how to stand up for themselves legally, NMFS thinks it can push them around;

(5) NMFS should come up with a different plan;

(6) NMFS needs to get more people in the field to see what is going on;

(7) NMFS uses the General category as a buffer for the Angling category;

(8) NMFS has allowed excessive catches of small bluefin and should assess the number of spawners lost because of fishing over quota in the Angling category;

(9) NMFS should support fishermen and request an increase in quotas;

(10) In the future, NMFS should take reallocation proposals out to the public;

(11) Proposal 11 in the proposed rule was not clear;

(12) NMFS should explain what it considers a traditional fishery; and

(13) Fishermen are being hit with regulations that are too complicated.

**Response:** NMFS does listen to fishermen. Now that there is an HMS Management Division, personnel from this Division will try to get out and experience, first hand, the fisheries for every category.

NMFS agrees that the quota is a scientific monitoring quota, but does not believe that a Purse seine category is inconsistent with the ICCAT recommendations.

Comments on closing the Gulf of Mexico are beyond the scope of this rule. In the Angling category and the General category, catches are sampled across a wide spectrum of age-classes.

NMFS does not try to "push fishermen around." NMFS respects the views of fishermen and believes they do know how to get them considered.

NMFS does not use the General category as a buffer for the Angling category. The "buffer" for overages in any category has been the Inseason Adjustment amount (reserve).

ICCAT placed a restriction on the take of small bluefin to ensure that adequate numbers of immature bluefin reached spawning age. NMFS has assessed, and continues to assess, the performance of the fishery. This ICCAT restriction on small fish (less than 120 cm) of 15 percent of the western Atlantic quota of 2660 mt has never been exceeded. A specific NMFS assessment on the effect of staying within the Angling category quota showed minimal benefits to the spawning stock compared to staying with 1,160 mt as adopted by ICCAT for the 1982 fishing year.

NMFS tries to support fishermen by managing fishery resources for optimum yield or maximum sustainable yield,



which is an ICCAT objective. As stated previously, to raise the U.S. quota for bluefin tuna would violate the ICCAT recommendation and U.S. law, and could mean long-term losses for fishermen.

The reference to proposal 11 being unclear addressed item 11 of the measures in the proposed rule. This category of "other measures" was clearly defined on page 17876 of the proposed rule.

A traditional fishery is one that has been operating for a significant portion of the history of the entire fishery. The actual time can vary, depending on the length of time the entire fishery has been prosecuted.

NMFS attempts to make regulations as simple as possible.

Other procedural and/or general comments received:

- (1) NMFS should make sure other countries are complying;
- (2) NMFS should urge ICCAT to adopt trade resolutions;
- (3) One speaker did not believe other countries are abiding by the rules;
- (4) The United States should abandon ICCAT;
- (5) The United States should encourage other countries to join ICCAT;
- (6) The Administration should move NMFS out of the Department of Commerce;
- (7) NMFS should impose an export tax on bluefin and use the money to improve enforcement;

*Response:* None of these comments is within the scope of this particular rulemaking.

#### 15. Incidental Fishery

*Comment:* Aside from the quota, there were no changes proposed in the incidental catch regulations.

Nevertheless, NMFS received many oral and written comments on the existing incidental catch provisions. Specific comments were:

- (1) NMFS should avoid hurting the northern Incidental category, the northern and southern areas should be treated consistently;
- (2) Southern area overages should not come out of the northern quota;
- (3) Gear with a bycatch of bluefin should be prohibited in the spawning area during the spawning season;
- (4) Circle hooks allow bluefin to be retrieved alive (longline), while "j" hooks more often kill the bluefin;
- (5) NMFS should consider trip time limits, e.g., five to seven days;
- (6) NMFS should allow two fish/trip;
- (7) The northern incidental limit should state "or one fish;" and

- (8) Close the Gulf of Mexico to all categories during spawning.

*Response:* Many of these comments have merit and deserve further consideration. However, because incidental catch provisions were not under consideration in the proposed regulation, and because changes in incidental catch regulations would be complex and require further analysis, NMFS concludes that it is appropriate to address changes in the incidental catch regulations, and other issues, in a future rulemaking.

#### 16. Heads on Requirement

*Comment:* Although the proposed rule did not propose to change the current requirement that all tuna landed, except giant bluefin tuna, be landed with heads on and gills and tail intact, NMFS specifically invited comments on this issue. Almost everyone who commented on the current requirement opposed the regulation as unnecessary. However, Blue Water Fishermen's Association prepared a comprehensive statement on the issue. Blue Water stated: "It is unnecessary to have heads and gills intact in order to identify accurately the various tuna species; it disrupts the traditional and customary practice of removing heads, gills, and tails to facilitate marketing; it seriously compromises the quality of U.S. landed tuna by requiring that the gills and head remain attached; it could have serious effects on export markets for tunas; it places unnecessary burdens on commercial vessels with limited space in the hold; the requirement makes at-sea cleaning more hazardous; and the requirement creates problems for docks, fish dealers, and vessels who are required to remove and dispose of heads in port."

*Response:* NMFS agrees with these comments. The final regulations remove the "heads-on" requirement. After further investigation, NMFS believes that headed tuna can be identified from existing keys and available information. NMFS is working to develop user-friendly keys as additional help to identify tunas with the heads removed.

#### 17. Tag and Release

*Comment:* NMFS received a number of comments that supported or suggested ways to improve a tag and release program. One comment suggested that tag and release stresses fish and that individuals would have to be knowledgeable on tag and release techniques to release fish alive. Other comments suggested tag and release only for small bluefin. Additional specific comments included:

- (1) If NMFS believes the sale value of small fish is not important, it should establish a catch and release industry;
- (2) NMFS should push tag and release;
- (3) Even harpooners should get involved in tagging;
- (4) Tag and release stresses fish;
- (4) NMFS needs an awards program for tagging fish; and
- (5) NMFS should reward the tagger, as well as the person who recaptures the tagged fish.

*Response:* NMFS agrees with the importance of a tag and release program and is working on ways to accommodate most of the comments on this issue. Additional money has been allocated for tags to ensure a supply for those that wish to participate. A toll-free number (800-437-3936) is available for information on tags and tagging. Personnel at the NMFS Southeast Fisheries Science Center are working on additional incentives for tagging and recapturing bluefin and other pelagic species. Information will be available and presented to fishermen on proper techniques of tagging to reduce stress or mortality of fish. NMFS does not agree that the small fish catch should be catch and release only. This has been an historical fishery, provides scientific data, and is allowed by ICCAT.

#### 18. General Category Set-Aside

*Comments:* There were several comments on how to adjust and use the General category set-aside. They are as follows:

- (1) Designate the set-aside for the New York Bight as in the past.
- (2) NMFS should reduce the set-aside by 1/3 to 34 tons (United Boatmen).
- (3) There is no justification for the "mudhole" set-aside.
- (4) Change the line to the 43800 Loran C reading.

*Response:* NMFS has reduced this set-aside by 10 percent and left the flexibility to use it as in the past for the late New York Bight giant fishery if needed. NMFS will evaluate the impact of using the 43800 Loran C line for the cut-off.

#### 19. Comments on the Economic Impact Analysis

*Comment:* Many miscellaneous comments concerned the economic impact of the proposed regulations and the analysis in the Regulatory Impact Review. This section responds individually to those comments.

*Comment:* The RIR was a good addition to the economic information on the fishery.

*Response:* Comment noted.



*Comment:* NMFS should determine the costs of the harvesting sector over the period of the reductions in order to calculate the number of small entities that might remain viable to experience any future benefits.

*Response:* NMFS does not disagree, but unfortunately, as explained in the RIR, there is not sufficient information to do such an analysis.

*Comment:* Two fish/person/day for school bluefin assumes the availability of fish in excess of 66 pounds (30 kg). This is not true in Virginia.

*Response:* NMFS agrees that large school fish are not caught generally off Virginia. However, increasing the bag limit so that more school fish could be retained per angler would result in an even shorter season than will be available under the final regulations. A longer season should be less disruptive to charter boat operators, their customers, and their supporting industries. For some anglers who otherwise would have caught more than one school fish, the experience may be less satisfying.

*Comment:* The private boat limit of one school fish/day will completely end this fishery.

*Response:* NMFS realizes that a limit of one school fish per day per boat is significant. As discussed above, this provision has been changed in the final rule.

*Comment:* There will be a major recession in the fishing communities if this regulation passes. The allocation scheme would result in a devastating loss in the Northeast.

*Response:* NMFS disagrees. There may be an adverse effect on some communities, but NMFS does not conclude that a "major recession" or a "devastating loss" would occur. The final regulations have been designed to lessen adverse effects, but a 10-percent decrease in the overall quota cannot be implemented without some adverse effects.

*Comment:* This proposal is not a minor rule and would have a significant effect on small businesses. The overall impact would be greater than \$100 million.

*Response:* NMFS disagrees. The FRIR demonstrates that the effect of the final regulations is well below the threshold of a "major" regulation.

*Comment:* The combination of no sale of mediums and the cut in quota will devastate Cape Cod.

*Response:* The effect of the final regulations might be felt more in the Cape Cod area than in some other areas. The ban on sale of tuna less than 310 pounds (141 kg) has been modified so

that fish in the newly defined "large medium" class may be sold.

*Comment:* The Angling category is a \$300 million industry.

*Response:* NMFS has no knowledge of studies that provide or support this estimate and suspects it may be a reference to the charter boat industry for all species.

*Comment:* A Massachusetts fisherman cited 25,000 recreational fishermen in the State and 212 members in his club, of which 75 percent buy vessels for tuna fishing, but most do not catch a fish. There will be a large economic impact from the proposed regulations.

*Response:* The bluefin tuna fishery is important in Massachusetts and elsewhere. NMFS does not have a complete estimate of the number of fishermen in Massachusetts who fish for bluefin tuna. NMFS realizes that many fishermen attempt to catch tuna, but not all are successful.

*Comment:* The charter boat industry in Montauk will be down 50 percent due to the bag limit.

*Response:* NMFS does not know the relationship between bag limits and the desires of anglers to purchase charter boat services. Given that very few anglers have caught the higher bag limits, NMFS doubts that the decrease in business will be 50 percent.

*Comment:* The export value for bluefin is very small; the generated recreational value is greater. Bluefin are worth more as a recreational species than as a commercial species.

*Response:* NMFS has insufficient data at this time to determine what sector of the fishery has a greater value. As discussed in the FRIR there is no clear distinction between the "commercial" and "recreational" components of the fishery. Many of the bluefin exported were undoubtedly caught by fishermen who were fishing more for the experience than the income, but also welcomed the income.

*Comment:* Boats from Virginia cannot go all the way to the Gulf Stream to fish for yellowfin tuna—bluefin are closer to shore.

*Response:* NMFS realizes that bluefin are often closer to shore than yellowfin tuna and, therefore, are the more desirable fish for some anglers. The increase in the boat limit from one bluefin per private boat to two should provide more satisfaction to anglers pursuing bluefin, but may shorten the season.

*Comment:* The economic effects of the one fish/day for private boats has greater economic impact than it would on charter boats. There are only about 40 charter boats and 1,000–1,500 private boats.

*Response:* The differential for charter and party boats supports the employment (captains and mates) in that sector. As mentioned earlier, NMFS has modified the final rule to allow two school bluefin per private boat. Also NMFS is enhancing its tag and release program which, hopefully, will motivate more fishermen to participate in this program. NMFS believes these two changes should encourage fishermen to continue to fish for bluefin and reduce economic impacts that might be otherwise caused by fishermen choosing other activities rather than fishing.

*Comment:* The American Fisheries Society stated that the long-term gains from rebuilding the stock to more productive levels far outweigh short term losses.

*Response:* NMFS recognizes that the long-term potential yields from western Atlantic bluefin could be substantially higher than those currently available, provided the stock is allowed to recover to the level that will sustain such yields. Although there are limited data to quantify that the gains "far outweigh" the losses, NMFS scientists have estimated that the MSY for western Atlantic bluefin tuna could be in excess of 10,000 mt versus a quota of 2660 mt or less. NMFS took the position in favor of a 50 percent reduction in catch at the 1991 ICCAT meeting, which would have expedited the rebuilding process, but this was not adopted by ICCAT. Regardless, the ATCA limits the options that NMFS has to implement the ICCAT quota. The final regulations try for a reasonable balance between the competing short and long-term objectives.

*Comment:* NMFS is showing a lack of sensitivity to economic and social needs and has no plan to deal with these dislocations.

*Response:* NMFS has considered the potential adverse affects of the final regulations and has tried to mitigate, to the extent possible, adverse impacts on fishermen while also providing for stock rebuilding.

*Comment:* No-sale of mediums will benefit other countries that sell to Japan.

*Response:* As explained earlier, NMFS has adjusted the no-sale provision.

*Comment:* The rule will eliminate many fishermen from the industry.

*Response:* NMFS has tried to minimize the adverse economic impact of these regulations, but realizes that there will be some who may elect to leave the industry.

*Comment:* Giants are economically important to pay the bills.

*Response:* NMFS agrees.



*Comment:* Some data in the RIR are flawed. The commenter cited employment associated with packing, provision of dry ice, and airline business impacts equating to 52,800 man-hours.

*Response:* NMFS realizes that the data relating to transportation and shipping costs are limited and could well be low. However, the estimates provided by the commenter seem high. Regardless of which estimate is closer to reality, this estimate was only one of many pieces of information used in reaching our conclusion.

#### 20. Miscellaneous Comments

(1) NMFS should correct the 2 percent limit in the northern longline fishery.

(2) NMFS should restrict the harvest based on tonnage and number of fish.

(3) NMFS should separate the categories for giants and mediums.

(4) There should be a rule that fishermen must predesignate and use only one port each year.

(5) NMFS should make boats fish in one area to prevent them from following the fish.

(6) The United States should replace the ICCAT commissioners.

(7) Most charter boat catches get filleted and put into coolers.

(8) What is NMFS's position on pair-trawling?

(9) Many "bluefin" landed are actually longtail tuna.

*Response:* Several of these comments are beyond the scope of this rulemaking. Tuna are required to be landed in the round with fins intact. They can be headed and gutted but cannot legally be cut into fillets aboard a vessel.

Pair trawls (see section 285.31(a)(7)) are not an allowable gear for harvesting bluefin tuna.

According to Collette and Nauen (1983, *Scombrids of the World*, FAO Fisheries Synopsis No. 125, Vol. 2, Rome, 137pp), the longtail tuna, *Thunnus tonggol*, is a small tuna species with a maximum fork length of somewhat less than 140 cm. Although juveniles of this species and northern bluefin (*Thunnus thynnus*) are similar in appearance, it is unlikely that northern bluefin tuna from the west Atlantic would be confused with this species since *Thunnus Tonggol* is not scientifically documented to occur in the western Atlantic ocean and is mainly known from the Indo-West Pacific, Indian Ocean, and Red Sea regions.

*Comment:* One commenter suggested that the start of the season be delayed until August and one requested that the season not be delayed.

*Response:* NMFS does not believe that the start of the season should be delayed. Although there is some

evidence that the value of the commercial harvest could be increased due to the higher prices per pound paid for bluefin near the end of the season, NMFS recognizes that many people pursue large medium and giant bluefin as a summer pastime, beginning in June.

#### Classification

This final rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.* The Assistant Administrator has determined that this final rule is necessary to implement the recommendations of ICCAT and is necessary for management of the Atlantic bluefin tuna fishery.

An EA, prepared by NMFS, concluded that there will be no significant impact on the human environment as a result of this action. A copy of the EA is available (see ADDRESSES).

The Assistant Administrator has determined, based on the FRIR prepared for this rule, that this is not a "major" rule requiring a Regulatory Impact Analysis under E.O. 12291. The action will not have a cumulative effect on the economy of \$100 million or more, nor will it result in a major increase in costs to consumers, industries, Government agencies, or geographical regions. No significant adverse effects on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises are anticipated.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. As a result, a regulatory flexibility analysis was not prepared. According to the FRIR, the reduction in overall bluefin catch necessary to comply with the ICCAT recommendations is expected to result in aggregate annual net revenue losses for the fleet amounting to an estimated \$1.3 million (see FRIR, section VII). You may obtain a copy of the FRIR from NMFS (see ADDRESSES).

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of the Atlantic, Gulf of Mexico, and Caribbean States that have approved coastal zone management programs. These determinations were submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. South Carolina, Rhode Island, Delaware, and Louisiana agreed with the determination. The

other State agencies did not comment within the statutory time period; therefore, consistency is presumed.

This rule does not contain any new collection-of-information requirements subject to the Paperwork Reduction Act. It repeats requirements that were approved by the Office of Management and Budget (OMB) under OMB control numbers 0648-0202 and 0648-0239. They are repeated because changes in the definitions for size classes and the change in size for sale required changing or deleting several words in existing text. The public reporting burden for these collections of information is estimated to average 15 minutes per response for a vessel permit application and 2 minutes per response for dealer reports. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspects of these collections of information, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and the Office of the Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator also finds for good cause that it is impracticable and contrary to the public interest to delay for 30 days the effective date of these regulations, under section 553(d) of the Administrative Procedure Act. This rule must be implemented as soon as possible under the ATCA to meet the legally binding recommendations from the 1991 ICCAT meeting (explained above). Also, the 1992 fishing season has started and if restrictions on catch contained in this rule are not in place immediately, quotas could be reached or exceeded early in the fishing season, causing early closures and severe economic impacts on certain geographical areas with traditionally late season fisheries.

#### List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 16, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 285 is amended as follows:



## PART 285—ATLANTIC TUNA FISHERIES

1. The authority citation for part 285 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*

2. In § 285.2, new definitions for *charter boat*, *Director*, *party boat*, and *private boat* are added in alphabetical order to read as follows:

### § 285.2 Definitions.

*Charter boat* means a vessel whose operator is licensed by the U.S. Coast Guard to carry six or fewer paying passengers and whose passengers fish for a fee.

*Director* means the Director of the Office of Fisheries Conservation and Management, 1335 East-West Highway, Silver Spring, MD 20910.

*Party boat* means a vessel whose operator is licensed by the U.S. Coast Guard to carry seven or more paying passengers and whose passengers fish for a fee.

*Private boat* means any vessel fishing in the Angling category other than charter or party boats.

3. In § 285.3, paragraph (f) is revised, and a new paragraph (h) is added, to read as follows:

### § 285.3 Prohibitions

(f) For any person or vessel subject to the jurisdiction of the United States to land any tuna in forms other than round (fins intact), or other than with the head removed and eviscerated.

(h) For any person to refuse to provide information requested by NMFS personnel or anyone collecting information for NMFS relating to the scientific monitoring or management of tuna.

4. In § 285.20, paragraph (a)(1)(i) is removed, paragraphs (a)(1)(ii) through (a)(1)(iv) are redesignated paragraphs (a)(1)(i) through (a)(1)(iii), respectively; and newly redesignated paragraphs (a)(1)(i) and (a)(1)(ii) and paragraphs (b)(1) and (b)(3) are revised to read as follows:

### § 285.20 Fishing seasons.

(a) \* \* \*

(1) \* \* \*

(i) For anglers fishing for school, large school, and small medium Atlantic bluefin tuna under the quota specified in § 285.22(d);

(ii) For vessels permitted in the Incidental Catch category fishing under the quota specified in 285.22(e); and

(b) \* \* \*

(1) The Assistant Administrator will monitor catch and landing statistics, including catch and landing statistics from previous years and projections based on those statistics, of Atlantic bluefin tuna by vessels other than those permitted in the Purse Seine category. On the basis of these statistics, the Assistant Administrator will project a date when the catch of Atlantic bluefin tuna will equal any quota under § 285.22, and will publish a notice in the *Federal Register* stating that fishing for or retaining Atlantic bluefin tuna under the quota must cease on that date at a specified hour.

(3) A vessel permitted in the Purse Seine category may fish under the quota specified in § 285.22(c) only until the allocation assigned or transferred under § 285.25(d) to that vessel is reached. Upon reaching its individual vessel allocation of Atlantic bluefin tuna, a vessel will be deemed to have been given notice that the fishery for such tuna is closed to that vessel.

5. Section 285.21 is amended by revising paragraphs (a) and (b) to read as follows:

### § 285.21 Vessel permits.

(a) *Permit requirements.* Each vessel that fishes for or takes Atlantic bluefin tuna, except vessels fishing in the Angling category under § 285.24(d), must have an appropriate permit issued under this section.

(b) *Categories of permits.* The Regional Director will issue a permit to each vessel for only one of the following categories: General (handgear), Harpoon Boat, Purse Seine, or Incidental Catch. A permitted vessel is entitled to fish for Atlantic bluefin tuna only under the quota for the category in which it is permitted, and must use gear appropriate to that category. Anglers also may fish for school, large school, and small medium Atlantic bluefin tuna from a vessel that has a permit for the General category, or for the Incidental Catch category (rod and reel) as specified in § 285.23(d). Anglers will remain subject to provisions of this subpart applicable to angling. The Regional Director will issue permits to catch and retain Atlantic bluefin tuna under § 285.22(c) only to current owners of those purse seine vessels, or their replacements, that were granted allocations under this subpart and

landed Atlantic bluefin tuna in the fishery for Atlantic bluefin tuna during the period 1980 through 1982. The Regional Director will not issue a permit to take Atlantic bluefin tuna under this subpart to any vessel that was replaced with another vessel and retired from the purse seine fishery during the period 1980 through 1982, unless that vessel is replacing another vessel being retired from the fishery.

6. Section 285.22 is revised to read as follows:

### § 285.22 Quotas.

The total annual amount of Atlantic bluefin tuna that may be caught and retained by persons and vessels subject to U.S. jurisdiction in the regulatory area is subdivided as follows:

(a) *General.* The total amount of large medium and giant Atlantic bluefin tuna that may be caught and retained in the regulatory area by vessels permitted in the General category under § 285.21(b) is 531 mt. If the Assistant Administrator determines (based on dealer reports, availability of large medium or giant Atlantic bluefin tuna on the fishing grounds, and any other relevant information), that variations in seasonal distribution, abundance, or migration patterns of Atlantic bluefin tuna, and the catch rate, may prevent fishermen in an identified area from harvesting their share of the quota, the Assistant Administrator may set aside an allocation for such area. The amount of any allocation will not exceed the greater of 40 mt or the maximum reported landings in the identified area in any of the preceding 3 years. The Assistant Administrator will publish a notice of any allocation and its basis in the *Federal Register*. The daily catch limit for the identified area will be set at one large medium or giant Atlantic bluefin tuna per day per vessel.

(b) *Harpoon Boat.* The total amount of large medium and giant Atlantic bluefin tuna that may be caught and retained in the regulatory area by vessels permitted in Harpoon Boat category under § 285.21(b) is 53 mt.

(c) *Purse Seine.* The total amount of large medium and giant Atlantic bluefin tuna that may be caught and retained in the regulatory area by vessels permitted in the Purse Seine category under § 285.21(b) is 301 mt.

(d) *Angling.* The total amount of school, large school, and small medium Atlantic bluefin tuna that may be caught and retained in the regulatory area by anglers is 219 mt. No more than 100 mt of this quota may be school Atlantic



bluefin tuna. This quota is further subdivided as follows:

(1) 47 mt of school Atlantic bluefin tuna may be landed in Delaware and states south;

(2) 53 mt of school Atlantic bluefin tuna may be landed in New Jersey and states north.

(e) *Incidental*. The total amount of Atlantic bluefin tuna that may be caught and retained in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b) is 226 mt for the 2-year period 1992-1993. This quota is further subdivided as follows:

(1) In 1992, 132 mt for longline vessels. No more than 104 mt may be taken in the area south of 36°00' N. latitude.

(2) In years after 1992, 85 mt for longline vessels. No more than 67 mt may be taken in the area south of 36°00' N. latitude.

(3) For vessels fishing for species of fish other than tuna, 5 mt in 1992 and 4 mt in years after 1992.

(f) *Inseason adjustment amount*. The total amount of Atlantic bluefin tuna that will be held in reserve for inseason adjustments is 31 mt. The Assistant Administrator may allocate any portion (from zero to 100 percent) of this amount to any category or categories of the fishery, including research activities authorized under § 285.1(c). The Assistant Administrator will publish a notice of allocation of any inseason adjustment amount in the *Federal Register* before such allocation is to become effective. Before making any such allocation, the Assistant Administrator will consider the following factors:

(1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock;

(2) The catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made;

(3) The projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season; and

(4) The estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

(g) The catching or retention of school, large school or small medium Atlantic bluefin tuna is prohibited except as allowed by paragraph (d) of this section.

(h) In 1993, if the Assistant Administrator determines, based on landing statistics and other available information, that a 1992 quota in any category, or as appropriate, subcategory,

has been exceeded or has not been reached, the Assistant Administrator will subtract the overage from or add the underage to that quota for 1993; provided that the total of the 1992 harvest plus the 1993 adjusted quotas and the reserve does not exceed 2,497 mt. The Assistant Administrator will publish any amounts to be subtracted or added and the basis for the quota reductions or increases in the *Federal Register*.

7. Section 285.23 is revised to read as follows:

#### § 285.23 Incidental catch.

(a) *Herring, mackerel, and menhaden purse seine vessels and vessels using fixed gear other than longlines or traps (pounds, weirs, and gill-nets)*. Subject to the quotas in § 285.22, any person operating a vessel fishing with these types of gear principally for species of fish other than tuna and possessing an Incidental Catch permit issued under § 285.21 may retain, during any fishing trip, large medium and giant Atlantic bluefin tuna, provided that the total amount of Atlantic bluefin tuna taken does not exceed 2 percent, by weight, of all other fish aboard the vessel at the end of each fishing trip.

(b) *Traps*. Subject to the quotas in § 285.22, any person operating a vessel possessing an Incidental Catch permit issued under § 285.21 that catches Atlantic bluefin tuna incidentally while fishing with traps, may retain large medium and giant Atlantic bluefin tuna, provided that such tuna do not exceed 2 percent, by weight, of the total amount of all other species caught within the preceding 30-day period.

(c) *Longlines*. Subject to the quotas in § 285.22, any person operating a vessel using longline gear possessing an Incidental Catch permit issued under § 285.21 may retain or land large medium and giant Atlantic bluefin tuna as an incidental catch. The amount of Atlantic bluefin tuna retained or landed may not exceed:

(1) One fish per vessel per fishing trip landed south of 36°00' N. latitude, provided that at least 2,500 pounds (1,134 kg) of species other than Atlantic bluefin tuna are caught and offloaded from the same trip and are recorded on the dealer weighout as sold; and

(2) Two percent by weight of all other fish landed, offloaded and documented on the dealer weighout as sold at the end of each fishing trip, north of 36°00' N. latitude.

(d) *Rod and reel*. Subject to the quotas in § 285.22, any person operating a vessel using rod and reel gear and possessing an Incidental Catch permit issued under § 285.21 may catch and

retain annually one large medium or giant Atlantic bluefin tuna as an incidental catch. The permit holder must report to the nearest NMFS enforcement office within 24 hours of landing any large medium or giant bluefin, and must make the tuna available for inspection and attachment of a metal tag. No such Atlantic bluefin tuna may be sold or transferred to any person for a commercial purpose except for taxidermic purposes.

(e) *Purse Seine*. Vessels in the Purse Seine category fishing for other tunas are allowed a 1-percent per trip (by weight) incidental take of bluefin less than 178 cm. Any landings of these incidental catches may not be sold and will be counted against the Purse Seine category quota.

(f) *Other gear*. Incidental harvest of Atlantic bluefin tuna by gear other than specified in § 285.22 or in this section is prohibited.

8. Section 285.24 is revised to read as follows:

#### § 285.24 Catch limits.

(a) *General category*. From June 1, vessels permitted in the General category under § 285.21 may catch only one large medium or giant Atlantic bluefin tuna per day per vessel. The Assistant Administrator may adjust the daily catch rate limit to a maximum of three giant Atlantic bluefin tuna per day per vessel based on a review of dealer reports, daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota. The Assistant Administrator will publish a notice in the *Federal Register* of any adjustment in the allowable daily catch limit made under this paragraph. Operators of vessels permitted in the General category may possess large medium and giant Atlantic bluefin tuna in an amount not to exceed a single day's catch, regardless of the length of the trip, as allowed by the daily catch limit in effect at that time.

(b) *Harpoon Boat category*. Vessels permitted in the Harpoon Boat category may catch multiple giant bluefin tuna but only one large medium bluefin tuna per day per vessel may be caught.

(c) *Purse Seine category*. Vessels permitted in the Purse Seine category may catch large mediums, provided that the total amount of such taken does not exceed 10 percent by weight of the total amount of giant Atlantic bluefin tuna aboard the vessel at the end of each fishing trip.

(d) *Angling category*.—(1) *Anglers*. Anglers may catch and retain each day no more than two Atlantic bluefin tuna,



only one of which may be a small medium and only one of which may be a school bluefin tuna. Anglers may not retain young school, large medium, or giant Atlantic bluefin tuna.

(2) *Party and charter boats*—(i) Party and charter boats may catch and retain each day the bag limit for anglers specified in paragraph (d)(1) of this section for each angler on board; provided, however, that no more than one small medium bluefin tuna may be retained each day, regardless of the number of anglers on board. The captain, mate, or crew member of a

party or charter boat is not an "angler" for purposes of this section.

(ii) The Assistant Administrator may increase the bag limit for school tuna for anglers on party and charter boats from one to two, and may reduce it from two to one, based on a review of daily landing trends, availability of the species on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota. The Assistant Administrator will publish a notice in the *Federal Register* of any adjustment in the bag limit made under this paragraph.

(3) *Private boats*. Private boats may catch and retain each day the bag limit for anglers specified in paragraph (d)(1) of this section for the number of anglers on board; provided, however, that no more than one small medium and two school bluefin tuna may be retained each day, regardless of the number of anglers on board.

9. Section 285.26 is amended by revising the table to read as follows:

**§ 285.26 Size Classes.**

Size class	Total fork length	Pectoral fin fork length	Approx. round weight
Young school	<26 in (<66 cm)	<19 in (<49 cm)	14 lbs (<6.4 kg).
School	26 to <45 in (66 to <115 cm)	19 to <33 in (49 to <85 cm)	14 to <66 lbs. (6.4 to <30 kg).
Large school	45 to <57 in (115 to <145 cm)	33 to <42 in (85 to <108 cm)	66 to <135 lbs. (30 to <62 kg).
Small Medium	57 to <70 in (145 to <178 cm)	42 to <52 in (108 to <132 cm)	135 to <235 lbs. (61 to <107 kg).
Large Medium	70 to <77 in (178 to <196 cm)	52 to <57 in (132 to <145 cm)	235 to <310 lbs. (107 to <141 kg).
Giant	77 in or greater (196 cm or greater)	57 in or greater (145 cm)	310 lbs or greater. (141 kg or greater).

10. Section 285.29 is amended by revising paragraph (a) to read as follows:

**§ 285.29 Dealer recordkeeping and reporting.**

(a) Must submit to the Regional Director a daily report on a reporting card provided by NMFS, within 24 hours of the purchase or receipt of each Atlantic bluefin tuna that was purchased or received from the person or vessel that harvested the fish. Said card must be postmarked within 24 hours of the purchase or receipt of each Atlantic bluefin tuna. Each reporting card must be signed by the vessel permit holder or vessel operator to verify the name of the vessel that landed the fish and must show the Atlantic bluefin tuna vessel permit number, metal tag number affixed to the fish by the dealer or assigned by an authorized officer, the date landed, the port where landed, the round or dressed weight, the fork length, gear used, and area where caught.

11. Section 285.30 is amended by revising paragraphs (c)(1) and (d) to read as follows:

**§ 285.30 Metal tags.**

(c) \* \* \*

(1) A dealer or agent must affix a metal tag to each Atlantic bluefin tuna

purchased or received immediately upon its offloading from a vessel. The metal tag must be affixed to the tuna between the fifth dorsal finlet and the keel.

(d) *Removal of tags*. A metal tag affixed to any Atlantic bluefin tuna must remain on the tuna until the tuna is either cut into portions or sold for export from the United States. If the tuna or tuna parts subsequently are packaged for transport for domestic commercial use or for export, the tag number must be written legibly and indelibly on the outside of any package or container. Tag numbers must be recorded on any document accompanying shipment of bluefin tuna for commercial use or export.

12. Section 285.31 is amended by revising paragraphs (a)(10), (a)(17), (a)(18), (a)(26), and (a)(28) and adding paragraphs (a)(34) through (a)(38) to read as follows:

**§ 285.31 Prohibitions.**

(a) \* \* \*

(10) Land any Atlantic bluefin tuna in forms other than round (fins intact), or other than with the head removed and eviscerated;

(17) Fail to release immediately with a minimum of injury any Atlantic bluefin tuna that will not be retained;

(18) Fail to affix immediately to any Atlantic bluefin tuna, between the fifth dorsal finlet and the keel, an individually numbered metal tag when the tuna has been received for a commercial purpose or purchased by that person from any person or vessel having caught such tuna;

(26) Fish for or catch Atlantic bluefin tuna with longline gear except as provided in § 285.23(e);

(28) Fish for or catch school, large school or small medium Atlantic bluefin tuna with gear other than hook and line, which is held by hand or rod and reel made for this purpose;

(34) Retain young school Atlantic bluefin tuna for any purpose;

(35) Sell, offer for sale, purchase, receive for a commercial purpose, trade or barter any Atlantic bluefin tuna other than a large medium or giant;

(36) Refuse to permit access of NMFS personnel to inspect any records relating to, or area of custody of, Atlantic bluefin tuna;

(37) Retain or land any Atlantic bluefin tuna by gear other than specified in § 285.22 or § 285.23; or

(38) Retain or land any bluefin tuna less than 178 cm from a permitted vessel other than one issued a General category permit and having anglers on



board, or an incidental category (rod and reel) permit under § 285.21, or a Purse Seine category permit and operating under § 285.23(e).

#### §§ 285.1, 285.5, 285.25 [Amended]

13. In addition to the amendments set forth above, in 50 CFR part 285 remove the words "Regional Director" and add, in their place, the word "Director" in the following places:

- (a) Section 285.1(c);
- (b) Section 285.5(c); and
- (c) Section 285.25(b).

[FR Doc. 92-17346 Filed 7-20-92; 5:00 pm]

BILLING CODE 3510-22-M

### 50 CFR Part 655

[Docket No. 920246-2168]

#### Atlantic Mackerel, Squid, and Butterfish Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final initial specifications for the 1992 squid and butterfish fisheries.

**SUMMARY:** NMFS issues this final notice of initial specifications for the 1992 fishing year for squid and butterfish. Regulations governing these fisheries require the Secretary of Commerce (Secretary) to publish specifications for the current fishing year. This action is intended to fulfill this requirement and to promote the development of the U.S. squid and butterfish fisheries.

**DATES:** Effective July 23, 1992, through December 31, 1992.

**ADDRESSES:** Copies of the Mid-Atlantic Fishery Management Council's "quota paper" and recommendations are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

Copies of the environmental assessment prepared by the Northeast Regional Office for this action are available from Richard B. Roe, Regional Director, Northeast Region, NMFS, 1 Blackburn Circle, Gloucester, MA 01930.

**FOR FURTHER INFORMATION:** Myles Raizin, 508-281-9104 or Richard Seamans, 508-281-9244.

**SUPPLEMENTARY INFORMATION:** Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council), appear at 50 CFR part 655. These regulations stipulate that the Secretary will publish a notice specifying the initial annual amounts of the initial optimum yield

(IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species. Procedures for determining the initial annual amounts are found at § 655.21. Proposed initial specifications for the 1992 Atlantic mackerel, squid, and Butterfish fisheries were published on February 27, 1992 (57 FR 6693).

The following table contains the final initial specifications for *Loligo* squid, *Illex* squid, and butterfish. These specifications are based on the recommendations of the Council, the environmental assessment prepared for this action, and public comment.

INITIAL ANNUAL SPECIFICATIONS FOR SQUID AND BUTTERFISH FOR THE 1992 FISHING YEAR

	Specifications			Butterfish
	Loligo	Squid	Illex	
Max OY <sup>1</sup>	44,000	30,000	16,000	
ABC <sup>2</sup>	37,000	30,000	16,000	
IOY	34,000	27,000	10,000	
DAH	34,000	27,000	10,000	
DAP	34,000	27,000	10,000	
JVP	0	0	0	
TALFF	0	0	0	

<sup>1</sup> Max OY stated in the FMP.

<sup>2</sup> IOY can rise to this amount.

#### Comments and Responses

Five sets of comments on the proposed initial specifications were received. All commenters addressed the proposed zero TALFF specification for Atlantic mackerel; four of the commenters opposed this proposed specification, while one commenter supported it. The comments concerning the proposed zero TALFF for Atlantic mackerel and responses to those comments will be summarized in a separate final notice of initial specifications for that species. One commenter opposed the 3,000 mt specification for JVP in the *Illex* squid fishery.

**Comment:** There should be no joint venture allocation for *Illex* because such product would compete with DAP product, thereby resulting in market disruption and lost revenues.

**Response:** NMFS views this comment with supporting documents as a reasonable argument for the elimination of the 3,000 mt proposed JVP for *Illex*. The "processor preference" amendment to the Magnuson Fishery Conservation and Management Act allows the

Secretary to protect developing U.S. fisheries by not supplying product to foreign nations that may directly compete with U.S.-processed products and, thus, restrict the development of markets for these products.

**Comment:** Prior to 1991, total annual *Illex* landings did not exceed 12,000 mt since 1983. What is the scientific basis for determining that a doubling of the allowable harvest would not adversely impact spawning recruitment in light of the agency's acknowledgement of the unstable population dynamics for a species with a short life span?

**Response:** NMFS recognizes that uncertainty is pervasive in this fishery with regard to stock abundance and availability. However, the maximum sustainable yield for this fishery has been estimated to be 40,000 mt. Therefore, the specification of 27,000 mt is conservative in regard to abundance considerations.

**Comment:** How does NMFS reconcile a doubling of the proposed quota with the possibility that a downward cyclic trend may be on the horizon with regard to stock abundance?

**Response:** The cycle referred to by the commentor is derived from an all-sizes research survey index. The 1990 index, as a measure of relative stock abundance, was 74 percent above the mean index for the years 1967 to 1990. Since the specifications for this fishery are annual, NMFS believes that raising the ABC in periods of high abundance is rational.

#### Changes From the Proposed Specifications

The Director, Northeast Region, NMFS (Regional Director) has chosen to eliminate the proposed JVP allocation (3,000 mt) for the *Illex* squid fishery, thereby reducing the recommended JVP for *Illex* to zero. This action results in the lowering of the IOY, DAH, and DAP to 27,000 mt. However, the ABC will remain at 30,000 mt equal to the Maximum OY for the *Illex* squid fishery. NMFS concurs with public comment that suggested that JVP for *Illex* in 1992 would directly compete with the domestic processed product and hinder growth of the domestic freezer trawler fishery.

Final specifications for Atlantic mackerel for the 1992 fishing year are not included in this action. The Council, in its analysis for specifications for Atlantic mackerel, recommended zero TALFF. The Council used testimony from industry and analysis of nine economic factors found at § 655.21(b)(2)(ii) of the regulations and concluded that if directed foreign fishing